(24,598)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 380.

SEABOARD AIR LINE RAILWAY, PLAINTIFF IN ERROR,

vs.

THE STATE OF NORTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

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1 In the Supreme Court of North Carolina, Fall Term, 1914.

No. 241.

STATE OF NORTH CAROLINA
vs.
SEABOARD AIR LINE RAILWAY.

Petition for Writ of Error.

To the Honorable Walter Clark, Chief Justice of the Supreme Court of North Carolina:

Your petitioner, Seaboard Air Line Railway, a corporation of the State of Virginia, North Carolina and other States, respectfully shows:

1. This is a criminal prosecution by the State of North Carolina against the Seaboard Air Line Railway upon an indictment charging a violation of the law of North Carolina, Section 5, Chapter 44, Public Laws of 1913, by refusing to permit R. L. Davis, a citizen of Wake County and State of North Carolina, to inspect the record of said Seaboard Air Line Railway of the shipment of spirituous and malt liquors transported by said railroad over its line of railroad from the State of Virginia to the City of Raleigh, Wake County, North Carolina, the said record containing the names of the consignors, consignees, date of receipt and delivery of said shipments and to whom delivered.

The defendant moved to quash the indictment and at the conclusion of all the evidence, moved to dismiss the action upon grounds set forth in written motions filed. The jury at July Term, 1914, of the Superior Court of Wake County, found the following special verdict.

"We, the jurors sworn and empanneled in this case, return the following special verdict in this case, the defendant having agreed that a special verdict might be found:

"We find that R. L. Davis, on a date prior to the starting of this prosecution, he being at that time a citizen of the
2 county of Wake, State of North Carolina, went to the office of the defendant company during its business hours, and while said office was open, and demanded of the agent that he be allowed to inspect the book kept by the defendant showing shipments of liquor from points outside of the State of North Carolina to the city of Raleigh.

"We further find that the said Davis was not an officer.

"We further find that the agent of the defendant stated that he was instructed to and did refuse to allow the said Davis to make the inspection which he had requested and demanded.

"We further find that the said Davis had no legal process and did not make any demand under any legal process, and at the time

of the alleged demand he was neither a State nor Federal officer of any kind of any State or Territory.

"We further find that at the time the said Davis made such demand, he was seeking information from said book for the purpose of prosecuting persons suspected of violating the law of North Carolina.

"We further find that at the time said demand was made that said Davis was seeking general information as to shipments of whiskey into the city of Raleigh from points in another State, and that he had in his mind especially an effort to see what evidence could be procured against one or more specific parties in the city of Raleigh, meaning by the words 'general information,' that he was seeking to ascertain who were the consignees of liquor and the quantities they were receiving, for the purpose of prosecuting such parties as may be charged or suspected with the violation of the prohibition laws of the State.

"We further find that the witness R. L. Davis, at the time he made a demand for an inspection of the book, had no authority except that which existed, if any, by virtue of the fact that he was at that time a citizen of the State.

"If, upon the foregoing facts the Court is of the opinion that the defendant is guilty, then we say for our verdict that the
3 defendant is guilty; if upon said facts the Court is of opinion that the defendant is not guilty, then we find that the defend-
is not guilty."

Upon the special verdict the Court adjudged defendant not guilty. The State excepted and appealed to the Supreme Court of North Carolina, and the defendant also appealed in order to save its exceptions to refusal to quash the indictment and denial of motion to dismiss the action and for judgment of non-suit.

2. The Supreme Court of North Carolina, which is the highest court in the State of North Carolina, in which a decision in the said action could be had, at February Term, 1915, of said court, to-wit, on February 10th, 1915, rendered judgment adverse to this petitioner, reversing the judgment of said Superior Court of Wake County.

3. That in said proceeding had and judgment rendered, certain errors were committed to the prejudice of the petitioner, all of which more fully appears in the assignments of error filed herewith.

4. That the defenses of petitioner arose under the Constitution of the United States and the Acts of Congress, to-wit: The Interstate Commerce Act, enacted February 4th, 1887, as amended, the Wilson Act, Chapter 728, 26 Statutes at Large 313, and Sections 238 and 239 of the Criminal Code of the United States.

5. That the errors complained of in this petition, and more fully set forth in the assignments of error accompanying this petition are that the Supreme Court of North Carolina decided against the rights set up and claimed by your petitioner under the Constitution of the United States and the said statutes of the United States in that the Court adjudged the defendant guilty upon the special verdict found by the jury, and your petitioner was in other ways

in the trial of said action deprived of its rights under the said Constitution of the United States and said Statutes.

Therefore, considering itself aggrieved by the final decision of the Supreme Court of North Carolina in rendering judgment against it in the above entitled case, your petitioner hereby prays
4 that a writ of error may issue from the Supreme Court of the United States to the Supreme Court of the State of North Carolina for the correction of the errors complained of; that an order may be entered fixing the amount of the supersedeas bond herein; that a duly authenticated transcript of the record and proceedings herein in said Supreme Court of North Carolina may be sent to the Supreme Court of the United States, and that the decision and judgment of the Supreme Court of North Carolina may be reversed and annulled.

Assignment of errors herewith filed.

SEABOARD AIR LINE RAILWAY, [SEAL.]
By MURRAY ALLEN,
Attorney for Seaboard Air Line Railway.

STATE OF NORTH CAROLINA, *ss:*

Let the writ of error issue upon the execution of a bond by the Seaboard Air Line Railway in the sum of One Thousand Dollars; such bond when approved to act as a supersedeas. This February 18th, 1915.

WALTER CLARK,
Chief Justice of Supreme Court of North Carolina.

5 In Supreme Court of North Carolina, Fall Term, 1914.

No. 241.

STATE OF NORTH CAROLINA
vs.
SEABOARD AIR LINE RAILWAY.

Assignment of Errors and Prayer for Reversal.

This is an indictment by the State of North Carolina against Seaboard Air Line Railway for violation of a statute enacted by the Legislature of North Carolina, Chapter 44, Public Laws of 1913, Section 5, providing that: "All express companies, railroad companies, or other transportation companies doing business in this State are required to keep a separate book in which shall be entered immediately upon receipt thereof the name of the person to whom the liquor is shipped, the amount and kind received, and the date when received, the date when delivered, by whom delivered, and to whom delivered, after which record shall be a blank space, in which the consignee shall be required to sign his name, or if he cannot write, shall make his mark in the presence of a witness, before such liquor is delivered to such consignee, and which said book shall be open

for inspection to any officer or citizen of the State, county or municipality any time during business hours of the company, and said book shall constitute prima facie evidence of the facts therein and will be admissible in any of the courts of this State. Any express company, railroad company or other transportation company violating the provisions of this section shall be guilty of a misdemeanor; Provided, upon the filing of a certificate signed by a reputable physician or two (2) reputable citizens that the consignee is unable, by reason of sickness or infirmities of age, to appear in person, then the said company is authorized to deliver any package to the agent of said consignee, and the agent shall sign the name of the consignee and his own name, and the certificate shall be filed of record."

6 The book which defendant is required by this statute to keep, contains a record of shipments of liquors in interstate commerce. The defendant moved to quash the indictment for the reasons set forth hereinafter and demurred to the evidence and upon the rendition of the special verdict set forth in the record, moved for judgment of not guilty upon the same grounds. This latter motion was allowed and the State appealed to the Supreme Court of North Carolina from the judgment rendered and the defendant appealed in order to present the exceptions to the refusal of motion to quash and motion to dismiss the action at the conclusion of the evidence. The defendant's appeal was dismissed by the Supreme Court of North Carolina, without prejudice, however, to its right to have its positions considered and its rights made available by proper appellate procedure on entry of judgment below on the State's appeal, and upon the State's appeal judgment of "not guilty" was reversed and the trial court directed to enter a general verdict of "guilty."

Now comes the Seaboard Air Line Railway, plaintiff in error, and files herewith its petition for writ of error and says that there are errors in the record and proceedings in the above entitled cause, and, for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignments of error:

1. For that the Supreme Court of North Carolina erred in its construction of a statute of the United States enacted by Congress February 4th, 1887, known as the Act to Regulate Commerce, as amended, and particularly Section 1, as amended June 29, 1906, April 13, 1908, and June 18, 1910, and Section 5, as amended June 29, 1906, and June 18, 1910, and Section 20.

2. For that the Supreme Court of North Carolina erred in its construction of a statute of the United States, known as the Wilson Act, chapter 728, 26 Statutes at Large, 313, U. S. Comp. Stat. 1901, page 3177.

3. For that the Supreme Court of North Carolina erred in its construction of statutes of the United States, Sections 238 and 239 of the Criminal Code of the United States.

7 4. For that the Supreme Court of North Carolina erred in its construction of the statute of the United States, enacted March 1st, 1913, Chap. 90, 37 Statutes at Large, 699, known as the Webb-Kenyon Law.

5. For that by these errors the Supreme Court of North Carolina

decided against the rights set up and claimed by your petitioner under the said statutes and denied to your petitioner a correct construction, interpretation and application of the provisions of said statutes.

6. For that the Supreme Court of North Carolina erred in reversing the judgment in this case because it denied to plaintiff in error the right, privilege or immunity of being governed in respect of its violation of the statute of the State of North Carolina, Section 5, Chapter 44, Public Laws of 1913, solely by the constitution of the United States, Section 8, Article 1, and the Act of Congress of February 4th, 1887, as amended, known as the Act to Regulate Commerce, and the Wilson Act, Chapter 728, 26 Statutes at Large 313, the Act of Congress, known as the Webb-Kenyon Law, 37 Statutes at Large 699, and Sections 238 and 239 of the Criminal Code of the United States, as properly construed, and in adjudging the plaintiff in error guilty of a violation of said statute of the State of North Carolina by an erroneous construction of said statutes of the United States, thereby denying the plaintiff in error, Seaboard Air Line Railway, the right, privilege or immunity aforesaid, which it duly and specially set up in this proceeding.

The said errors complained of by which the plaintiff in error was denied protection, rights, privileges and immunities created by or arising under Article 1, Section 8, of the Constitution of the United States, conferring upon Congress the power to regulate commerce among the States and the Statutes of the United States, enacted under the authority thereof, which said protection, rights, privileges and immunities were specially claimed, set up and relied upon in this proceeding, are more specifically set forth as follows:

7. For that it is charged in the indictment and appears from the evidence and special verdict that the defendant on the first
8 day of January, 1914, prior and subsequent to said date, transported over and on its line of railway shipments of spirituous and malt liquors from points in the State of Virginia to its station in the city of Raleigh, Wake County, North Carolina, and having kept a record of such shipments of spirituous and malt liquors transported as aforesaid, with the names of the consignors, consignees, date of the receipt and delivery of said shipments, and to whom delivered, required by the laws of North Carolina, on the 1st day of January, 1914, failed and refused to exhibit to, and failed and refused to permit to be inspected by R. L. Davis, after demand had been made by him, the said R. L. Davis, to inspect said record of said Seaboard Air Line Railway containing a record of the shipments of spirituous and malt liquors transported by said railway over its line of railroad from the State of Virginia to the city of Raleigh, Wake County, State of North Carolina, and it appears from the evidence that the shipments involved are shipments of interstate commerce, and the defendant cannot be required by statute or by other action on the part of the State of North Carolina to keep records of interstate shipments of spirituous and malt liquor, with the names of consignors, consignees, date of the receipt and delivery and to whom delivered, as required by the laws of North Carolina, and any statute which requires such record to be kept is in violation of Article I, section 8,

of the Constitution of the United States, conferring upon Congress the power to regulate commerce among the several States.

8. For that it is charged in the indictment and appears from the evidence and special verdict that the defendant failed and refused to permit R. L. Davis to inspect its record of the receipt and delivery of shipments of liquor from the State of Virginia to Raleigh, N. C., and this evidence fails to establish the commission of a crime, because the said R. L. Davis has no right or authority to inspect said record, and the defendant is prohibited by the Act to Regulate Commerce, enacted by the Congress of the United States February 4, 1887, section 15, as amended June 29, 1906, and June 18, 1910, from permitting the said R. L. Davis to inspect its records of interstate
9 shipments of liquor, and it is made unlawful by said section for the defendant knowingly to disclose or permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee or routing of any property tendered or delivered to the defendant for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor.

9. For that the evidence and special verdict fail to establish the commission of a crime, because in refusing to permit the inspection of its records of shipments of liquor from the State of Virginia to Raleigh, Wake County, North Carolina, the defendant is acting in obedience to section 15 of the Act to Regulate Commerce, enacted by Congress of the United States February 4, 1887, as amended June 29, 1906, and June 18, 1910; and an act done in obedience of an act of Congress, enacted in accordance with the power to regulate commerce among the several States conferred by the Constitution of the United States upon Congress, cannot constitute a crime, although such conduct may be violative of a State statute.

10. For that the Statute enacted by the Legislature of North Carolina, Chapter 44, Public Laws of 1913, section 5, upon which this action is based, in so far as it applies to shipments from the State of Virginia to Raleigh, Wake County, North Carolina, is unconstitutional, null and void, because it is an attempt on the part of the State to regulate commerce, and is an unlawful interference with such commerce, in that it imposes as a condition precedent to the delivery of a shipment of liquor from another State that the carrier shall keep a separate book in which shall be entered immediately upon receipt thereof the name of the person to whom the liquor is shipped, the amount and kind received, the date when received, the date when delivered, by whom delivered and to whom delivered, and the consignee is required to sign his name or mark his name before
10 delivery can be made in violation of Article I, section 8, of the Constitution of the United States, which confers upon Congress of the United States the power to regulate commerce among the several States.

11. For that the statute enacted by the Legislature of North Carolina, chapter 44, Public Laws of 1913, section 5, upon which this action is based, in so far as it applies to shipments from the State of

Virginia to Raleigh, Wake County, North Carolina, is unconstitutional, null, and void, because Congress of the United States, by the Act to Regulate Commerce, enacted February 4, 1887, as amended, and particularly section 1, as amended June 29, 1906, April 13, 1908, and June 18, 1910, and section 15, as amended June 29, 1906, and June 8, 1910, and by the enactment of the Wilson Act, chapter 728, 26 Stat. at l., 313 U. S. Comp. Stat. 1901, p. 3177, and by the enactment of sections 238 and 239 of the Criminal Code of the United States, and other statutes, has enacted legislation which occupies the field of regulation of the transportation of interstate commerce, and the keeping of records relating thereto, including the transportation and delivery and records relating to interstate shipments of liquors, and if the State of North Carolina had the power to enact this statute and make it applicable to interstate shipments, such power was destroyed by the action of Congress in enacting the said statutes, in the exercise of the power conferred by Article 1, Section 8 of the Constitution of the United States.

12. For that the statute enacted by the Legislature of North Carolina, chapter 44, Public Laws of 1913, section 5, upon which this action is based, in so far as it applies to shipments from the State of Virginia to Raleigh, Wake County, North Carolina, is unconstitutional, null and void, because a compliance with its provisions by permitting a citizen of the State, county, or municipality to inspect its records of interstate shipments of liquors will constitute a violation by the railroad company of section 15 of the Act to Regulate Commerce, enacted by Congress of the United States, February 4,
11 1894, as amended June 29, 1906, and June 18, 1910, which provides that:

"It shall be unlawful for any common carrier subject to the provisions of this act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used: Provided, that nothing in this act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any State or Federal court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers. Any person, corporation, or association violating any of

the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for such offense, on conviction, shall pay to the United States a penalty of not more than $1,000."

13. For that the statute enacted by the Legislature of North Carolina, chapter 44, Public Laws of 1913, section 5, upon which
12 this action is based, in so far as it applies to shipments of liquors from the State of Virginia to Raleigh, Wake County, North Carolina, is violative of Article I, section 8, of the Constitution of the United States, and is null and void, and an indictment thereunder for the refusal to permit R. L. Davis to inspect the records of the receipt and delivery of shipments of liquor from the State of Virginia to Raleigh, Wake County, North Carolina, cannot be maintained.

14. For that the Webb-Kenyon law, enacted by Congress March 1st, 1913, chapter 90, 37 Statutes at Large 699, does not have the effect of divesting intoxicating liquor altogether of its interstate character, thereby permitting the laws of the State into which it is transported to operate upon it immediately upon its crossing the State line, and the Supreme Court of North Carolina erred in so holding.

15. For that the said Webb-Kenyon law, enacted by Congress March 1st, 1913, chapter 90, 37 statutes at Large 699, is itself repugnant to the Constitution of the United States and is unconstitutional and void, and therefore, cannot have the effect of divesting intoxicating liquors of their interstate character in the cases referred to therein.

16. For that, if the said Webb-Kenyon law is valid, the shipments of intoxicating liquor required by the statute of North Carolina to be recorded and the record of which is open to inspection by any citizen of North Carolina do not fall within the cases referred to in said law, and their character as interstate shipments is not affected thereby, and they are subject to every protection accorded other articles of interstate commerce and to every right, privilege and immunity created by or arising under the Constitution of the United States, and particularly under Article I, section 8, and the statutes enacted under the authority conferred thereby upon Congress, which protection, rights, privileges and immunities were specially claimed, set up and relied upon in this proceeding.

17. The Supreme Court of North Carolina for the various reasons above set forth, committed error in rendering the final
13 judgment it did against the plaintiff in error in this action.

Wherefore, for these and other manifest errors appearing in the record, the plaintiff in error, Seaboard Air Line Railway, prays that the said judgment of the Supreme Court of North Carolina dated the 10th day of February, 1915, be reversed and a judgment rendered in favor of plaintiff in error and for costs.

February 18, 1915.

MURRAY ALLEN,
Attorney for Seaboard Air Line Railway.

14 The Supreme Court of North Carolina, Fall Term, 1914.

No. 241.

SEABOARD AIR LINE RAILWAY, Plaintiff in Error,
vs.
STATE OF NORTH CAROLINA, Defendant in Error.

Bond.

Know all men by these presents, that we, Seaboard Air Line Railway, a corporation of the State of Virginia and other States, the principal office of which is in the City of Portsmouth, State of Virginia, as principal, and Fidelity and Deposit Company of Maryland, as sureties, are held and firmly bound unto State of North Carolina in the full and just sum of One Thousand Dollars ($1,000.00) to be paid the said State of North Carolina, its certain attorney or assigns; for the payment of which sum, well and truly to be made, we bind ourselves, and each of our successors and assigns, jointly and severally, firmly by these presents. Sealed with our seals and dated this 15th day of February, in the year of our Lord one thousand nine hundred and fifteen.

Whereas, lately at a hearing had before the Supreme Court of North Carolina in a suit depending in said Court, between the said State of North Carolina, as plaintiff, and Seaboard Air Line Railway, as defendant, a final judgment was rendered against the said Seaboard Air Line Railway and the said Seaboard Air Line Railway seeks to prosecute its writ of error to the Supreme Court of the United States to reverse the said final judgment in the aforesaid suit, and a citation having been directed to the said State of North Carolina citing and admonishing it to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, therefore, the condition of this obligation is such that if the said Seaboard Air Line Railway shall prosecute its said writ of error to effect, and answer all damages and costs which may be adjudged against it, if it fail to make its plea good, then this
15 obligation is to be void; else to remain in full force and effect.

SEABOARD AIR LINE RAILWAY, [SEAL.]
By MURRAY ALLEN, *Attorney.*
FIDELITY & DEPOSIT COMPANY OF MARYLAND, [SEAL.]
(S.) By ALBERT L. COX, *Attorney in Fact,*
(S.) By J. McKIMMON, *Agent.*

Bond approved and to act as supersedeas, this 18 day of February, 1915.

(S.) WALTER CLARK,
Chief Justice Supreme Court of North Carolina.

16 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of North Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between State of North Carolina, plaintiff, and Seaboard Air Line Railway, defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised, under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendant, Seaboard Air Line Railway, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, D. C., within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right,

17 and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward White, Chief Justice of the United States, the 18th day of February, in the year of our Lord one thousand nine hundred and fifteen.

[Seal United States District Court, Eastern Dist. of N. C., at Raleigh.]

ALEX L. BLOW,
Clerk District Court United States,
Eastern District of North Carolina.

Allowed by—

WALTER CLARK,
Chief Justice Supreme Court of North Carolina.

This 18th day of February, 1915.

18 UNITED STATES OF AMERICA, *ss:*

To State of North Carolina, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error, filed in the Office of the Clerk of the Supreme Court of North Carolina, wherein Seaboard Air Line Railway is plaintiff in error and you are defendant in error, to show cause if any there be, why the judgment rendered against the said plaintiff in error as in the writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Walter Clark, Chief Justice of the Supreme Court of North Carolina, this 18th day of February, in the year of our Lord one thousand nine hundred and fifteen.

WALTER CLARK,
Chief Justice Supreme Court of North Carolina.

Attest:

[Seal of the Supreme Court of the State of North Carolina.]

J. L. SEAWELL,
Clerk Supreme Court of North Carolina.

I, Thomas W. Bickett, Attorney General of the State of North Carolina and attorney of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation and acknowledge receipt of a true copy of same, together with copy of petition for writ of error, assignment of errors, prayer for reversal, bond and writ of error. This 25th day of February, 1915, at Raleigh, N. C.

THOS. W. BICKETT,
Attorney General of State of North Carolina and Attorney of Record for Defendant in Error.

19 *Certificate.*

SUPREME COURT OF NORTH CAROLINA, *ss:*

This is to certify that the foregoing petition for writ of error, assignment of errors and prayer for reversal, bond, writ of error and citation were filed in the office of the Clerk of Supreme Court of North Carolina and copies lodged for defendant in error, State of North Carolina, on this 24th day of February, 1915.

[Seal of the Supreme Court of the State of North Carolina.]

J. L. SEAWELL,
Clerk Supreme Court of North Carolina.

20 Seventh District.

No. 233.

STATE OF NORTH CAROLINA
versus
SEABOARD AIR LINE RAILWAY.

[From Wake.]

Before Bond, Judge.

Both Parties Appealed.

STATE OF NORTH CAROLINA,
Wake County:

Be it remembered, that at a Superior Court held for the county of Wake, at the courthouse in Raleigh, on the ninth Monday after the first Monday of March, in the year of our Lord one thousand nine hundred and fourteen, before the Honorable O. H. Allen, judge, upon the oath of R. B. Nichols, C. G. Mitchell, E. T. Bledsoe, C. W. Scott, J. J. Turner, J. B. Sauls, W. A. Wynne, C. S. Brantley, B. F. Wilson, H. T. Barlow, C. H. Wallace, J. G. Daniels, W. E. Hilliard, W. T. Hill, B. Hobgood, W. F. Watson, C. J. Wall, and Martin Harvell, good and lawful men of the county aforesaid, duly summoned, drawn, sworn, and charged to inquire for the State of and concerning all crimes and offenses in the said county, it is presented in manner and form following, that is to say:

STATE OF NORTH CAROLINA,
Wake County:

Superior Court, May Term, 1914.

The jurors for the State upon their oath present, That Seaboard Air Line Railway, a railroad corporation and common carrier of intra- and interstate freight, doing business and having a station in the city of Raleigh, Wake County, State of North Caro-
21 lina, and having on the first day of January, 1914, prior and subsequent to said date transported over and on its line of railroad shipments of spirituous and malt liquor from points in the State of Virginia to its station in the city of Raleigh, county and State aforesaid, and having kept a record of such shipments of spirituous and malt liquor transported as aforesaid, with the names of the consignors, consignees, date of the receipt and delivery of said shipments and to whom delivered, required by the laws of North Carolina, on the first day of January, in the year of our Lord one thousand nine hundred and fourteen, with force and arms, at and in the county of Wake and State of North Carolina, unlawfully and willfully did fail and refuse to exhibit to, and fail and refuse to per-

mit to be inspected by, R. L. Davis, after demand had been made by him, the said R. L. Davis, to inspect said record of said Seaboard Air Line Railway, containing a record of the shipments of spirituous and malt liquors transported by said railway over its line of railroad from the State of Virginia to the city of Raleigh, Wake County, State of North Carolina, against the form of the statute in such case made and provided and against the peace and dignity of the State.

(Signed) H. E. NORRIS,
Solicitor.

Indorsed: Witnesses: × R. L. Davis, S. J. Betts.

Those marked × sworn by the undersigned foreman and examined before the grand jury, and this bill found "A true bill."

R. B. NICHOLS,
Foreman Grand Jury.

Whereupon the sheriff of Wake County is commanded that he cause the said Seaboard Air Line Railway to come and answer at the next term of said court.

Whereupon, towit, on the 19th day of May, A. D. 1914, a summons is issued out of the office of the clerk of the Superior Court of Wake County, directed to the sheriff of Wake County, with a copy for the defendant, together with a copy of the bill of
22 indictment, for the defendant Seaboard Air Line Railway, the said summons, with the return of the sheriff of Wake County thereon, is as follows, towit:

Summons for Relief.

WAKE COUNTY:

In the Superior Court.

STATE OF NORTH CAROLINA
v.
SEABOARD AIR LINE RAILWAY.

State of North Carolina to the Sheriff of Wake County, Greeting:

You are hereby commanded to summon Seaboard Air Line Railway, the defendant above named, if to be found within your county, to be and appear before the judge of our Superior Court, at a court to be held for the county of Wake, at the courthouse in Raleigh, N. C., on the thirteenth Monday after the first Monday of March, 1914, it being the 1st day of June, 1914, and answer the charges set forth in a bill of indictment, a copy of which is hereto attached and the original of which is on file in the office of the clerk of the Superior Court of Wake County; and let the said defendant take notice that if it fail to appear and plead and answer the said indictment the said cause will be proceeded with according to law.

Hereof fail not, and of this summons make due return.

Given under my hand and seal of said court, this 19th day of May, 1914.

(Signed) MILLARD MIAL,
Clerk Superior Court.

Return of Sheriff to Summons.

Received May 19, 1914. Served May 20, 1914, by reading the within summons to and delivering a copy of the same to W. T. Huntley, agent at Raleigh, N. C., for Seaboard Air Line
23 Railway; also delivering to said W. T. Huntley, agent, a copy of the bill of indictment hereto attached.

(Signed) J. H. SEARS,
Sheriff Wake County,
By J. J. HARWARD, *D. S.*

Trial, Etc.

And this case is continued from term to term until now at a term of the Superior Court begun and held for the county of Wake at the courthouse in Raleigh, on the eighth Monday before the first Monday in September, in the year of our Lord one thousand nine hundred and fourteen, and known and designated as the July Term, 1914, of said court, this action coming on for trial, the defendant by its attorney, Murray Allen, Esq., moves to quash the indictment and files its motion to quash in the words and figures as follows, towit:

Motion to Quash Indictment.

NORTH CAROLINA,
Wake County:

In Superior Court, July Term, 1914.

(Title of Cause.)

The defendant Seaboard Air Line Railway moves to quash this indictment upon the following grounds:

1. For that it is charged therein that the defendant on the first day of January, 1914, prior and subsequent to said date, transported over and on its line of railway shipments of spirituous and malt liquors from points in the State of Virginia to its station in the city of Raleigh, Wake County, North Carolina, and having kept a record of such shipments of spirituous and malt liquor transported as aforesaid, with the names of the consignors, consignees, date of the receipt and delivery of said shipments and to whom delivered, required by the laws of North Carolina, on the first day of January,

in the year of our Lord one thousand nine hundred and
24 fourteen, with force and arms, at and in the county of Wake and State of North Carolina, unlawfully and willfully did fail and refuse to exhibit to, and fail and refuse to permit to be inspected by, R. L. Davis, after demand had been made by him, the said R. L. Davis, to inspect said record of said Seaboard Air Line Railway containing a record of the shipments of spirituous and malt liquors transported by said railway over its line of railroad from the State of Virginia to the city of Raleigh, Wake County, State of North Carolina, against the form of the statute in such case made and provided and against the peace and dignity of the State; and it appears upon the face thereof that the shipments involved are shipments of interstate commerce, and the defendant cannot be required by statute or by other action on the part of the State of North Carolina to keep records of interstate shipments of spirituous and malt liquor with the names of consignor-, consignees, date of the receipt and delivery, and to whom delivered, as required by the laws of North Carolina, and any statute which requires such record to be kept is in violation of Article I, section 8, of the Constitution of the United States conferring upon Congress the power to regulate commerce among the several States, and the defendant claims, sets up, and relies upon the said section and all protection, rights, privileges, and immunities created thereby or arising thereunder.

2. For that it is charged therein that the defendant failed and refused to permit R. L. Davis to inspect its record of the receipt and delivery of shipments of liquor from the State of Virginia to Raleigh, N. C., and the indictment therein fails to charge an offense, because the said R. L. Davis has no right or authority to inspect said record, and the defendant is prohibited by the "Act to Regulate Commerce," enacted by the Congress of the United States February 4, 1887, section 15, as amended June 29, 1906, and June 18, 1910, from permitting the said R. L. Davis to inspect its records of interstate shipments of liquor; and it is made unlawful by said section for the defendant knowingly to disclose or permit to be acquired by
25 any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to the defendant for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor.

3. For that the said indictment does not charge a crime, because, in refusing to permit the inspection of its records of shipments of liquor from the State of Virginia to Raleigh, Wake County, North Carolina, the defendant is acting in obedience to section 15 of the "Act to Regulate Commerce," enacted by Congress of the United States February 4, 1887, as amended June 29, 1906, and June 18, 1910; and an act done in obedience *of* an act of Congress, enacted in accordance with the power to regulate commerce among the several States, conferred by the Constitution of the United States upon Con-

gress, cannot constitute a crime, although such conduct may be violative of a State statute; and the defendant claims, sets up and relies upon the said act of Congress, and all protection, rights, privileges, and immunities created thereby or arising thereunder.

4. For that the statute enacted by the Legislature of North Carolina, chapter 44, Public Laws of 1913, section 5, upon which this indictment is based, in so far as it applies to shipments from the State of Virginia to Raleigh, Wake County, North Carolina, is unconstitutional, null and void, because it is an attempt on the part of the State to regulate interstate commerce, and is an unlawful interference with such commerce, in that it imposes as a condition precedent to the delivery of a shipment of liquor from another State that the carrier shall keep a separate book in which shall be entered, immediately upon receipt thereof, the name of the person to whom the liquor is shipped, the amount and kind received, the date when received, the date when delivered, by whom delivered and to
26 whom delivered, and the consignee is required to sign his name or mark his name before delivery can be made, in violation of Article I, section 8, of the Constitution of the United States, which confers upon the Congress of the United States the power to regulate commerce among the several States; and the defendant again claims, sets up and relies upon the said section, and all protection, rights, privileges, and immunities created thereby or arising thereunder.

5. For that the statute enacted by the Legislature of North Carolina, chapter 44, Public Laws of 1913, section 5, upon which this indictment is based, in so far as it applies to shipments from the State of Virginia to Raleigh, Wake County, North Carolina, is unconstitutional, null and void, because the Congress of the United States, by the "Act to Regulate Commerce," enacted February 4, 1887, as amended, and particularly section 1, as amended June 29, 1906, April 13, 1908, and June 18, 1910, and section 15, as amended June 29, 1906, and June 18, 1910, and by the enactment of the Wilson Act, chapter 728, 26 Stat. at L., 313, U. S. Comp. Stat. 1900, p. 3177, and by the enactment of sections 238 and 239 of the Criminal Code of the United States, and other statutes, has enacted legislation which occupies the field of regulation of the transportation of interstate commerce, and the keeping of records relating thereto, including the transportation and delivery and records relating to interstate shipments of liquors; and if the State of North Carolina had the power to enact this statute and make it applicable to interstate shipments, such power was destroyed by the action of Congress in enacting the said statutes, in the exercise of the power conferred by section 1, Article VIII, of the Constitution of the United States; and the defendant again claims, sets up and relies upon all the protection, rights, privileges, and immunities created by and arising under said section and the statutes enacted by Congress in the exercise of the power thereby conferred.

6. For that the statute enacted by the Legislature of North Caro-

lina, chapter 44, Public Laws of 1913, section 5, upon which
27 this indictment is based, in so far as it applies to shipments from the State of Virginia to Raleigh, Wake County, North Carolina, is unconstitutional, null, and void, because a compliance with its provisions by permitting a citizen of the State, county, or municipality to inspect its records of interstate shipments of liquors will constitute a violation by the railroad company of section 15 of the "Act to Regulate Commerce," enacted by the Congress of the United States, February 4, 1884, as amended June 29, 1906, and June 18, 1910, which provides that:

"It shall be unlawful for any common carrier subject to the provisions of this act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used: Provided, that nothing in this act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any State or Federal court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.
28 Any person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for such offense, on conviction, shall pay to the United States a penalty of not more than $1.000"; and the defendant again claims, sets up, and relies upon the protection, rights, privileges, and immunities created by and arising under said section 1, Article VIII of the United States Constitution and the statutes enacted by Congress in the exercise of the power thereby conferred.

7. For that the statute enacted by the Legislature of North Carolina, chapter 44, Public Laws of 1913, section 5, upon which this indictment is based, in so far as it applies to shipments of liquors from the State of Virginia to Raleigh, Wake County, North Carolina, is violative of Article I, section 8, of the Constitution of the United States, and is null and void, and an indictment thereunder for the refusal to permit R. L. Davis to inspect the records of the receipt and delivery of shipments of liquor from the State of Virginia to

Raleigh, Wake County, North Carolina, cannot be maintained; and the defendant again claims, sets up, and relies upon all the protection, rights, privileges, and immunities created by and arising under said section and the statutes enacted by Congress in the exercise of the power thereby conferred.

SEABOARD AIR LINE RAILWAY,
By MURRAY ALLEN, *Attorney.*

This motion is overruled, and defendant excepts.

Whereupon defendant, reserving all rights, pleads "Not guilty."

Therefore let a jury come of good and lawful men, by whom the truth of the matter may be better known.

Jury.

Thereupon the following jurors, towit: R. C. Stephenson, L. R. Hamilton, A. H. Perry, W. H. Weatherspoon, Bryant Upchurch, S. M. Rowland, J. W. Hinnant, T. C. Ray, J. C. Hagwood,
29 M. B. Chamblee, D. H. House, G. H. Mooneyham, are chosen, tried, sworn, and impaneled to speak the truth of and concerning the premises in the indictment specified.

At the close of the evidence for the State, the defendant moves to dismiss the action and for judgment of nonsuit upon the grounds set forth in the following written motion:

Motion.

NORTH CAROLINA,
Wake County:

In the Superior Court, July Term, 1914.

(Title of Cause.)

The defendant Seaboard Air Line Railway moves to dismiss this action and for judgment of nonsuit upon the following grounds:

1. For that the evidence is insufficient to establish a violation of law by the defendant.

2. For that it appears from the evidence that the defendant on the first day of January, 1914, prior and subsequent to said date, transported over and on its line of railway shipments of spirituous and malt liquors from points in the State of Virginia to its station in the city of Raleigh, Wake County, North Carolina, and having kept a record of such shipments of spirituous and malt liquors transported as aforesaid, with the names of the consignors, consignees, date of the receipt and delivery of said shipments, and to whom delivered, required by the laws of North Carolina, on the 1st day of January, 1914, failed and refused to exhibit to, and failed and refused to permit to be inspected by R. L. Davis, after demand had been made by him, the said R. L. Davis, to inspect said record of said Seaboard Air

Line Railway containing a record of the shipments of spirituous and malt liquors transported by said railway over its line of railroad from the State of Virginia to the city of Raleigh, Wake County, State of North Carolina, and it appears from the evidence that the
30 shipments involved are shipments of interstate commerce, and the defendant cannot be required by statute or by other action on the part of the State of North Carolina to keep records of interstate shipments of spirituous and malt liquor, with the names of consignor-, consignees, date of the receipt and delivery and to whom delivered, as required by the laws of North Carolina, and any statute which requires such record to be kept is in violation of Article I, section 8, of the Constitution of the United States, conferring upon Congress the power to regulate commerce among the several States; and the defendant claims, sets up, and relies upon the said section and all rights, protection, and privileges and immunities created thereby or arising thereunder.

3. For that it appears from the evidence that the defendant failed and refused to permit R. L. Davis to inspect its record of the receipt and delivery of shipments of liquor from the State of Virginia to Raleigh, N. C., and this evidence fails to establish the commission of a crime, because the said R. L. Davis has no right or authority to inspect said record, and the defendant is prohibited by the Act to Regulate Commerce, enacted by the Congress of the United States February 4, 1887, section 15, as amended June 29, 1906, and June 18, 1910, from permitting the said R. L. Davis to inspect its records of interstate shipments of liquor, and it is made unlawful by said section for the defendant knowingly to disclose or permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee or routing of any property tendered or delivered to the defendant for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and the defendant claims, sets up, and relies upon all protection, rights, privileges and immunities created by or arising under said statute.

4. For that the evidence fails to establish the commission of a crime, because in refusing to permit the inspection of its
31 records of shipments of liquor from the State of Virginia to Raleigh, Wake County, North Carolina, the defendant is acting in obedience to section 15 of the Act to Regulate Commerce, enacted by Congress of the United States February 4, 1887, as amended June 29, 1906, and June 18, 1910; and an act done in obedience *of* an act of Congress, enacted in accordance with the power to regulate commerce among the several States conferred by the Constitution of the United States upon Congress, cannot constitute a crime, although such conduct may be violative of a State statute; and the defendant claims, sets up, and relies upon the said act of Congress and all protection, rights, privileges and immunities created thereby or arising thereunder.

5. For that the statute enacted by the Legislature of North Caro-

lina, chapter 44, Public Laws of 1913, section 5, upon which this action is based, in so far as it applies to shipments from the State of Virginia to Raleigh, Wake County, North Carolina, is unconstitutional, null and void, because it is an attempt on the part of the State to regulate interstate commerce, and is an unlawful interference with such commerce, in that it imposes as a condition precedent to the delivery of a shipment of liquor from another State that the carrier shall keep a separate book in which shall be entered immediately upon receipt thereof the name of the person to whom the liquor is shipped, the amount and kind received, the date when received, the date when delivered, by whom delivered and to whom delivered, and the consignee is required to sign his name or mark his name before delivery can be made, in violation of Article I, section 8, of the Constitution of the United States, which confers upon Congress of the United States the power to regulate commerce among the several States; and the defendant again claims, sets up, and relies upon the said section and all protection, rights, privileges and immunities created thereby or arising thereunder.

6. For that the statute enacted by the Legislature of North Carolina, chapter 44, Public Laws of 1913, section 5, upon which this
32 action is based, in so far as it applies to shipments from the State of Virginia to Raleigh, Wake County, North Carolina, is unconstitutional, null and void, because Congress of the United States, by the Act to Regulate Commerce, enacted February 4, 1887, as amended, and particularly section 1, as amended June 29, 1906, April 13, 1908, and June 18, 1910, and section 15, as amended June 29, 1906, and June 18, 1910, and by the enactment of the Wilson Act, chapter 728, 26 Stat. at L., 313, U. S. Comp. Stat. 1901, p. 3177, and by the enactment of sections 238 and 239 of the Criminal Code of the United States, and other statutes, has enacted legislation which occupies the field of regulation of the transportation of interstate commerce, and the keeping of records relating thereto, including the transportation and delivery and records relating to interstate shipments of liquors, and if the State of North Carolina had the power to enact this statute and make it applicable to interstate shipments, such power was destroyed by the action of Congress in enacting the said statutes, in the exercise of the power conferred by section 1, Article VIII of the Constitution of the United States; and the defendant again claims, sets up, and relies upon all protection, rights, privileges and immunities created by and arising under said section and the statutes enacted by Congress in the exercise of the power thereby conferred.

7. For that the statute enacted by the Legislature of North Carolina, chapter 44, Public Laws of 1913, section 5, upon which this action is based, in so far as it applies to shipments from the State of Virginia to Raleigh, Wake County, North Carolina, is unconstitutional, null and void, because a compliance with its provisions by permitting a citizen of the State, county, or municipality to inspect its records of interstate shipments of liquors will constitute a violation by the railroad company of section 15 of the Act to Regulate Commerce, enacted by Congress of the United States, February 4,

1894, as amended June 29, 1906, and June 18, 1910, which provides that:

33 "It shall be unlawful for any common carrier subject to the provisions of this act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used: Provided, that nothing in this act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any State or Federal court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers. Any person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for such offense, on conviction, shall pay to the United States a penalty of not more than $1,000;" and the defendant again claims, sets up, and relies upon the protection, rights, privileges and immunities created by and arising under said section 1, Article VIII of the United States Constitution, and the statute enacted by Congress under the power thereby conferred.

8. For that the statute enacted by the Legislature of North Carolina, chapter 44, Public Laws of 1913, section 5, upon which

34 this action is based, in so far as it applies to shipments of liquors from the State of Virginia to Raleigh, Wake County, North Carolina, is violative of Article I, section 8, of the Constitution of the United States, and is null and void, and an indictment thereunder for the refusal to permit R. L. Davis to inspect the records of the receipt and delivery of shipments of liquor from the State of Virginia to Raleigh, Wake County, North Carolina, cannot be maintained; and the defendant again claims, sets up, and relies upon all the protection, rights, privileges and immunities created by and arising under said section and the statutes enacted by Congress in the exercise of the power thereby conferred.

SEABOARD AIR LINE RAILWAY,
By MURRAY ALLEN, *Attorney.*

Motion overruled, and defendant excepts.

Defendant declines to offer any evidence, and renews its motion to dismiss the action and for judgment of nonsuit upon the grounds set forth in the foregoing written motion. Motion overruled, and defendant excepts.

Whereupon, by consent, the jury returned the following special verdict:

Special Verdict.

"We, the jurors sworn and impaneled in this case, return the following special verdict in this case, the defendant having agreed that a special verdict might be found:

"We find that R. L. Davis, on a date prior to the starting of this prosecution, he being at that time a citizen of the county of Wake, State of North Carolina, went to the office of the defendant company during its business hours, and while said office was open, and demanded of the agent that he be allowed to inspect the book kept by the defendant showing shipments of liquor from points outside of the State of North Carolina to the city of Raleigh.

35 "We further find that the said Davis was not an officer.

"We further find that the agent of the defendant stated that he was instructed to and did refuse to allow the said Davis to make the inspection which he had requested and demanded.

"We further find that the said Davis had no legal process and did not make any demand under any legal process, and at the time of the alleged demand he was neither a State nor Federal officer of any kind of any State or Territory.

"We further find that at the time the said Davis made such demand, he was seeking information from said book for the purpose of prosecuting persons suspected of violating the law of North Carolina.

"We further find that at the time said demand was made that said Davis was seeking general information as to shipments of whiskey into the city of Raleigh from points in another State, and that he had in his mind specially an effort to see what evidence could be procured against one or more specific parties in the city of Raleigh, meaning by the words 'general informaton' that he was seeking to ascertain who were the consignees of liquor and the quantities they were receiving, for the purpose of prosecuting such parties as may be charged or suspected with the violation of the prohibition laws of the State.

"We further find that the witness R. L. Davis, at the time he made a demand for an inspection of the book, had no authority except that which existed, if any, by virtue of the fact that he was at that time a citizen of the State.

"If, upon the foregoing facts the court is of the opinion that the defendant is guilty, then we say for our verdict that the defendant is guilty; if upon said facts the court is of the opinion that the defendant is not guilty, then we find that the defendant is not guilty."

Upon the rendering of the foregoing special verdict, the defendant Seaboard Air Line Railway moves for judgment of not guilty upon the special verdict because the facts stated therein do not
36 constitute a violation of the law, and upon the ground that the statute upon which the action is based is an attempted regulation of interstate commerce in violation of Article I, section 8, of the Constitution of the United States, and is unconstitutional and void, and for the reasons fully set out in the foregoing written motion to dismiss the action and for judgment of nonsuit.

Upon the foregoing special verdict the court adjudges that the defendant is not guilty. The State excepts.

Verdict of Not Guilty upon Special Verdict.

And thereupon the jury for their verdict say that the defendant Seaboard Air Line Railway is not guilty.

Motion by the State for a New Trial, etc.

Motion by the State to set aside the verdict and for a new trial. Motion overruled, and the State excepts.

Judgment.

Whereupon it is considered and adjudged by the court that the defendant, the said Seaboard Air Line Railway, be discharged.

Appeal, etc.

To the foregoing judgment the State again excepts, and appeals to the Supreme Court.

In open court notice of appeal is given by both the State and the defendant, and further notice is waived. Defendant's appeal bond is fixed at $50. By consent, the State and defendant are each allowed thirty days in which to file and serve statement of case on appeal, and the defendant is allowed to file counter-statement of ex-
37 ceptions to the statement of case on appeal served by the State, and the State is allowed thirty days to file and serve counter-statement of exceptions to the case on appeal served by the defendant.

Statement of Case on Appeal—Appeal by State.

NORTH CAROLINA,
Wake County:

In the Superior Court, July Term, 1914.

STATE OF NORTH CAROLINA
v.
SEABOARD AIR LINE RAILWAY.

This is a criminal action by the State of North Carolina, instituted against the defendant Seaboard Air Line Railway for a violation of the provisions of chapter 44, section 5, of the Public Laws of North Carolina, enacted by the session of Legislature of 1913.

The indictment is set forth in full in the record. As soon as the case was called for trial, and before the defendant had entered any plea, the defendant moved to quash the indictment for reasons set forth in written motion to quash indictment, which is set forth in full in record.

Motion to quash indictment is denied, and defendant excepts.

The defendant thereupon entered a plea of not guilty. Upon the impaneling of the jury the State offered the following evidence:

State's Evidence.

R. L. DAVIS, a witness for the State, testified that he is a citizen and resident of Raleigh, Wake County, North Carolina; that prior to the indictment in this action, he being at that time a citizen of the city of Raleigh, county of Wake, State of North Carolina, went
to the office of the defendant company at Raleigh, N. C.,
38 during its business hours, and while the said office was open, and demanded of the agent that he be allowed to inspect the book kept by the defendant showing shipments of liquor from towns outside of the State of North Carolina to the city of Raleigh; that he was not an officer; that the agent of the defendant stated that he was instructed to and did refuse to allow the witness to make the inspection which he had requested and demanded; that witness had no legal process and did not make any demand under any legal process, and at the time of the alleged demand he was neither a State nor Federal officer of any kind, of any State or Territory; that at the time he made such demand he was seeking information from the said book for the purpose of prosecuting persons suspected of violating the law of North Carolina; that at the time said demand was made he was seeking general information as to shipments of whiskey into the city of Raleigh from points in another State, and that he had in his mind especially an effort to see what evidence could be procured against one or more specified parties in the city of Raleigh, meaning by the words "general information" that he

was seeking to ascertain who were the consignees of liquor and the quantities they were receiving, for the purpose of prosecuting such parties as may be charged or suspected with the violation of the prohibition laws of the State; that at the time he made a demand for the inspection of the book, he had no authority except that which existed, if any, by virtue of the fact that he was at that time a citizen of the State.

Defendant in open court admits that it had in the office of its agent at Raleigh a book of the entries of liquor shipments from the State of Virginia and other States, as provided by section 5, chapter 4 of the Public Laws of North Carolina of 1913.

The State rests.

Thereupon the defendant Seaboard Air Line Railway moves to dismiss this action and for judgment of nonsuit, upon the grounds set forth in written motion filed, and which appears in full in the record. Motion overruled, and defendant excepts.

Defendant offers no evidence.

39 Thereupon the defendant renews its motion to dismiss the action and for judgment of nonsuit upon the grounds set forth in said written motion. Motion overruled, and defendant excepts.

Whereupon the jury rendered special verdict as set forth in full in the record, upon which the court rendered judgment of "Not guilty" and discharged the defendant.

The State excepted to the verdict and judgment and appealed to the Supreme Court.

Exception No. 1.

Notice of appeal in open court and further notice waived. By consent, State allowed thirty days to serve statement of case on appeal and the defendant is also allowed thirty days thereafter to serve counter-statement or exceptions.

Assignments of Error.

1. The State assigns as error his Honor's adjudging defendant not guilty under the facts admitted and the special verdict.

The foregoing is agreed upon as statement of case on appeal to the Supreme Court in the appeal by the State

H. E. NORRIS,
MANNING & KITCHIN,
Solicitor, and Attorneys for the State.
MURRAY ALLEN,
Attorney for Defendant.

This — day of August, 1914.

40 *Statement of Case on Appeal—Defendant's Appeal.*

NORTH CAROLINA,
Wake County:

In the Superior Court, July Term, 1914.

STATE OF NORTH CAROLINA
v.
SEABOARD AIR LINE RAILWAY.

This is a criminal action by the State of North Carolina, instituted against the defendant Seaboard Air Line Railway for a violation of the provisions of chapter 44, section 5, of the Public Laws of North Carolina, enacted by the session of Legislature of 1913.

The indictment is set forth in full in the record. As soon as the case was called for trial, and before the defendant had entered any plea, the defendant moved to quash the indictment for reasons set forth in written motion to quash indictment, which is set forth in full in record.

Motion to quash indictment is denied, and defendant excepts.

Exception No. 1.

The defendant thereupon entered a plea of not guilty. Upon the impaneling of the jury the State offered the following evidence:

State's Evidence.

R. L. DAVIS, a witness for the State, testified that he is a citizen and resident of Raleigh, Wake County, North Carolina; that prior to the indictment in this action, he being at that time a citizen of the city of Raleigh, county of Wake, State of North Carolina, went to the office of the defendant company at Raleigh, N. C., during its business hours, and while the said office was open, and demanded of the agent that he be allowed to inspect the book kept by the
41 defendant showing shipments of liquor from towns outside of the State of North Carolina to the city of Raleigh; that he was not an officer; that the agent of the defendant stated that he was instructed to and did refuse to allow the witness to make the inspection which he had requested and demanded; that witness had no legal process and did not make any demand under any legal process, and at the time of the alleged demand he was neither a State nor Federal officer of any kind, of any State or Territory; that at the time he made such demand he was seeking information from the said book for the purpose of prosecuting persons suspected of violating the law of North Carolina; that at the time said demand was made he was seeking general information as to shipments of whiskey into the city of Raleigh from points in another State, and that he had in his mind especially an effort to see what evidence could be

procured against one or more specified parties in the city of Raleigh, meaning by the words "general information" that he was seeking to ascertain who were the consignees of liquor and the quantities they were receiving, for the purpose of prosecuting such parties as may be charged or suspected with the violation of the prohibition laws of the State; that at the time he made a demand for the inspection of the book, he had no authority except that which existed, if any, by virtue of the fact that he was at that time a citizen of the State.

Defendant in open court admits that it had in the office of its agent at Raleigh a book of the entries of liquor shipments from the State of Virginia and other States, as provided by section 5, chapter 4 of the Public Laws of North Carolina of 1913.

The State rests.

Thereupon the defendant Seaboard Air Line Railway moves to dismiss this action and for judgment of nonsuit, upon the grounds set forth in written motion filed, and which appears in full in the record.

Motion overruled, and defendant excepts.

Exception No. 2.

42 Defendant offers no evidence.

Thereupon the defendant renews its motion to dismiss the action and for judgment of nonsuit upon the grounds set forth in the said written motion.

Motion overruled, and defendant excepts.

Exception No. 3.

Whereupon the jury rendered special verdict as set forth in full in the record, upon which the court rendered judgment of "Not guilty" and discharged the defendant.

The defendant excepted to the refusal to allow motion to quash indictment upon the grounds set forth in the written motion filed and to the refusal to dismiss the action and grant motion for judgment of nonsuit at the conclusion of the evidence upon grounds set forth in written motion filed, and appealed to the Supreme Court.

Notice of appeal in open court and further notice waived. By consent, defendant allowed thirty days to serve statement of case on appeal and the State is allowed thirty days thereafter to file and serve counter-statement or exceptions.

Appeal bond fixed at $50.

Assignments of Error.

The defendant Seaboard Air Line Railway assigns error and groups in exceptions as follows:

1. For that the court overruled defendant's motion to quash the indictment upon the grounds set forth in defendant's written motion. This is defendant's Exception No. 1.

2. For that the court overruled defendant's motion, at the close of the State's evidence, to dismiss the action and for judgment of nonsuit, upon the grounds set forth in defendant's written motion. This is defendant's Exception No. 2.

3. For that the court overruled defendant's motion, at the close of all the evidence, to dismiss the action and for judgment of
43 nonsuit, upon the grounds set forth in defendant's written motion. This is defendant's Exception No. 3.

MURRAY ALLEN,
Defendant's Attorney.

The foregoing is agreed upon as statement of case on appeal to Supreme Court in appeal by defendant.

H. E. NORRIS,
MANNING & KITCHIN,
Solicitor, and Attorneys for State.
MURRAY ALLEN,
Attorney for Defendant.

This — day of August, 1914.

(Copy.)

Appeal Bond.

NORTH CAROLINA,
Wake County:

In the Superior Court.

STATE
v.
SEABOARD AIR LINE RAILWAY.

Whereas the defendant in above entitled action, Seaboard Air Line Railway, has appealed to the Supreme Court: Now, therefore, we, Seaboard Air Line Railway and Fidelity and Deposit Company of Maryland, undertake, pursuant to the statute, that the said defendant shall pay all costs which may be awarded against it on such appeal, not exceeding, however, the sum of $50.

SEABOARD AIR LINE RAILWAY,
By MURRAY ALLEN, *Attorney.*
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By WM. H. PACE, *Attorney in Fact,*
[SEAL.] By J. L. SKINNER, *Agent.*

44 *Certificate of Clerk.*

STATE OF NORTH CAROLINA,
Wake County:

I, Millard Mial, clerk of the Superior Court of Wake County, State of North Carolina, do hereby certify that the foregoing contains a full, true, and perfect transcript of the record of said court in the case of State against Seaboard Air Line Railway.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at office in Raleigh, this 1st day of September, 1914.

[SEAL.] MILLARD MIAL,
Clerk Superior Court.

45 *Docket Entries.*

Appeal docketed September 2d, 1914.
Motion by State to dismiss defendant's appeal filed October 13th, 1914.
Argued on merits and on motion October 13th, 1914.
Held under adversari.
Opinion by Hoke, J., Feb. 10th, 1915, as follows:

46 Supreme Court of North Carolina, Spring Term, 1915.

No. 241.

STATE OF NORTH CAROLINA
vs.
SEABOARD AIR LINE RAILWAY.

Indictment for Refusing to Allow an Inspection of Certain Books Containing a Record of Shipments and Deliveries to Consignees of Intoxicating Liquors in Violation of Public Laws, 1913, Chapter 44, Sec. 5, tried before His Honor, W. M. Bond, Judge, and a jury, at July Term, 1914, of the Superior Court of Wake County.

It appeared that the defendant had such a book as the Statute requires it to keep and the relevant facts embodied in a special verdict and the proceedings thereon are as follows: "We, the jurors sworn and impaneled in this case, return the following special verdict in this case, the defendant having agreed that a special verdict might be found:

"We find that R. L. Davis, on a date prior to the starting of this prosecution, he being at that time a citizen of the county of Wake, State of North Carolina, went to the office of the defendant company during its business hours, and while said office was open, and demanded of the agent that he be allowed to inspect the book kept by

the defendant showing shipments of liquor from points outside of the State of North Carolina to the city of Raleigh.

"We further find that the said Davis was not an officer.

"We further find that the agent of the defendant stated that he was instructed to and did refuse to allow the said Davis to make the inspection which he had requested and demanded.

"We further find that the said Davis had no legal process and did not make any demand under any legal process, and at the time of the alleged demand he was neither a State nor Federal officer of any kind of any State or Territory.

"We further find that at the time the said Davis made such demand, he was seeking information from said book for the purpose of prosecuting persons suspected of violating the law of North Carolina.

47 "We further find that at the time said demand was made that said Davis was seeking general information as to shipments of whiskey into the city of Raleigh from points in another State, and that he had in his mind specially an effort to see what evidence could be procured against one or more specific parties in the city of Raleigh, meaning by the words "general information" that he was seeking to ascertain who were the consignees of liquor and the quantities they were receiving, for the purpose of prosecuting such parties as may be charged or suspected with the violation of the prohibition laws of the State.

"We further find that the witness R. L. Davis, at the time he made a demand for an inspection of the book, had no authority except that which existed, if any, by virtue of the fact that he was at that time a citizen of the State.

"If, upon the foregoing facts the court is of the opinion that the defendant is guilty, then we say for our verdict that the defendant is guilty; if upon said facts the court is of the opinion that the defendant is not guilty, then we find that the defendant is not guilty."

Upon the rendering of the foregoing special verdict, the defendant, Seaboard Air Line Railway, moves for judgment of not guilty upon the special verdict because the facts stated therein do not constitute a violation of the law, and upon the ground that the statute upon which the action is based is an attempted regulation of interstate commerce in violation of Article I, section 8, of the Constitution of the United States, and is unconstitutional and void, and for the reasons fully set out in the foregoing written motion to dismiss the action and for judgment of non-suit.

Upon the foregoing special verdict the court adjudged that the defendant is not guilty. The State excepts.

And thereupon the jury for their verdict say that the Seaboard Air Line Railway is not guilty.

Motion by the State to set aside the verdict and for a new trial. Motion overruled, and the State excepts.

Whereupon it is considered and adjudged by the court that the defendant, the Seaboard Air Line Railway, be discharged.

48 To the foregoing judgment the State again excepts and appeals to the Supreme Court.

Defendant also appealed in the case and assigned for errors the refusal of the Court to quash the bill of indictment and to dismiss the action, these motions having been duly made in apt time and for reasons stated in the record.

HOKE, *Judge:*

It has now for some years "been the settled public policy of this State, approved by popular vote and enforced by general and many local Statutes, that except in certain specified and very restricted instances, the manufacture and sale of intoxicating liquors shall not be allowed." Smith v. Express Co., 166 N. C. p. 155.

Acting no doubt under the conviction that where such policy has been established as necessary to the peace and well ordered progress of Communities the people are entitled to have the same upheld and recognizing that its successful maintenance and efficient enforcement is seriously hindered and at times obstructed by reason of interstate shipments of whiskey and because such shipments were withdrawn to a great extent from State regulation by the Commerce Clause of the Federal Constitution, Congress has, from time to time, enacted Statutes designed to bring this subject, the sale, disposition and use of intoxicating liquors more and more under the Police Power of the States. Thus, in 1890, not long after the decision of the Supreme Court of the United States in Leisy v. Hardin, 135 U. S. p. 100, in which it was held that, notwithstanding the prohibition statutes of a State to the contrary, an importer could ship whiskey into the State and sell same in original packages, Congress passed a Statute known as the Wilson Law, to the effect that all fermented, distilled or intoxicating liquors or liquids, transported into any State or Territory or remaining therein for use, consumption or storage, shall, on arrival in such State or Territory, be subject to the operation and effect of the laws of such State, etc.,
49 and shall not be exempt therefrom by reason of being introduced therein in original packages.

This Statute was upheld as a valid enactment in In Re Rahrer, 140 U. S. p. 545 and in Rhodes v. Iowa, 170 U. S., the terms "On arrival in such State or Territory" were construed to mean "When delivered to consignee in said State in continuous shipment from another State or Territory," the Court being of opinion that, on perusal of the entire Statute, its purpose and meaning was to enable the States to prohibit sales in original packages after delivery to consignee.

In these and other cases on the subject, clear intimation is given that Congress might, by additional legislation, further extend the Police Power of the State over the subject." Thus, in Rahrer's case, Chief Justice Fuller delivering the opinion said: "No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so.' And, in Leisy v. Hardin, the Court, in referring to the case of Bowman v. Railway, 125 U. S., 507, in which it had been held that, under the

Laws then existent, interstate shipments of whiskey were excluded from State regulation by the Commerce Clause of the Federal Constitution until delivery in continuous transit to the consignee, said: "Up to that time, we hold that, in the absence of Congressional permission to do so, the State had no power to interfere by seizure or any other action in prohibition of importation and sale by the foreigner or non-resident importer," a statement given with approval in Rhodes v. Iowa, Supra, p. 417.

In accord with these intimations, Congress, on March 1, 1913, Chapter 90, Federal Statutes, Anno. Supp., 1914, p. 208, passed the act known as the Webb-Kenyon law. It is entitled "An act divesting intoxicating liquors of their interstate character in certain cases, and provides, in general terms, that the shipment or transportation in any manner or by any means whatsoever of any spirituous, vinuous, malted, fermented or any intoxicating liquor of any kind from one State or Territory into another, etc. Which said
50 intoxicating liquor is intended by any person interested therein to be received, possessed, sold or in any manner used, either in the original package or otherwise, in violation of any law of such State or Territory, etc., is hereby prohibited. We are not aware that the validity or interpretation of this Statute has been directly presented for decision to the Supreme Court of the United States, but the question, in different phrases, has been before several of our State Courts and the lower Federal Courts of recognized ability and learning and there is a very general consensus of opinion, in which we fully concur, that the Act is constitutional; that it classifies interstate shipments of intoxicating liquors into legal and illegal, withdrawing from the effect and operation of the Commerce Clause of the Federal Constitution all such shipments into prohibition territory with intent to violate the laws thereof and, in view of the better considered cases, that the illegal intent of any "person interested therein," made determinative by the law, is an intent on the part of the consignee or other interested in the "Article" transported. Smith v. Express Co., 166 N. C., Supra; concurring opinion C. J. in State v. Cardwell, 166 N. C. p. 316; Adams Express Co. v. Commonwealth, 154 Ky., 462; Atkinson v. So. Ex. Co., 94, S. C. p. 444; State v. Express Co., 145 N. W., 145 (Iowa); Van Winkle v. State (Del.), 91 Atl., 385; American Express Co. v. Beer (Miss.), 65 So., 575; Exparte Peede (Texas Crim. App.), 170 So., 749. And, having regard to the language of the law and the facts and circumstances attendant on its passage and throwing light on its meaning and purpose, including also the significance and history of precedent legislation, we are of opinion further that all such shipments made illegal by the Webb-Kenyon law are brought within the Police Power of the State when and as soon as they cross the State line and are subject to such rules and regulations as are reasonably designed to make such power effective. This position is stated by Smith, C. J., delivering the opinion in Express Co. v. Beer, as follows: "The next statute of this character enacted by Congress was the one here under consideration, the Webb-Kenyon Act, and a

comparison of its language with that of the Wilson act will
51 demonstrate that its draftsman intended to cure the defect in the Wilson Act and to make it unlawful to transport into a State from without intoxicating liquors intended by any person interested therein to be dealt with contrary to the laws of the State; in other words, to divest such intoxicating liquors altogether of its interstate character, and thereby permit the laws of the State into which it was being transported to operate upon it immediately upon its crossing the State line * * *.

About the time thw Webb-Kenyon Law was enacted and with the view of its successful passage, the Legislature of N. C. enacted a Statute entitled "An Act to secure the enforcement of the laws against the sale and manufacture of intoxicating liquors, being Chap. 44 of Pub. Laws of 1913, and popularly known as the Search and Seizure law, which, in Sec. 1, prohibits the sale, exchange or bartering, etc., of such liquors and sec. 2 prohibits the keeping such liquors in possession for the purposes of sale and makes the following facts prima facie evidence of a violation of the second section:

"First. The possession of a license from the government of the United States to sell or manufacture intoxicating liquors; or

"Second. The possession of more than one gallon of spirituous liquors at any one time, whether in one or more places; or

Third. The possession of more than three gallons of vinous liquors at any one time, whether in one or more places; or

Fourth. The possession of more than five gallons of malt liquors at any one time, whether in one or more places; or

Fifth. The delivery to such person, firm, association or corporation of more than five gallons of spirituous or vinous liquors, or more than twenty gallons of malt liquors within any four successive weeks, whether in onr or more places; or

Sixth. The possession of intoxicating liquors as samples to obtain orders thereon, etc."

After establishing certain methods of procedure for the enforcement of these sections, the Act, among other things, and in Section 5 makes provision as follows: "All express companies, railroad companies, or other transportation companies doing business in
52 this State are required hereby to keep a separate book in which shall be entered immediately upon receipt thereof the name of the person to whom the liquor is shipped, the amount and kind received, and the date when received, the date when delivered, by whom delivered, and to whom delivered, after which record shall be a blank space, in which the consignee shall be required to sign his name, or if he cannot write, shall make his mark in the presence of a witness, before such liquor is delivered to such consignee, and which said book shall be open for inspection to any officer or citizen of the State, county or municipality any time during business hours of the company, and said book shall constitute prima facie evidence of the facts therein and will be admissible in any of the courts of this State. Any express company, railroad company, or other transportation company or any employee or agent of any express company, railway company, or other transportation company violating the

provisions of this section shall be guilty of a misdemeanor. * * *"

There are facts in the special verdict showing that defendant, having kept the book as specified and required by the law, refused, during business hours, to permit R. L. Davis, at the time a citizen and resident of Wake County, North Carolina, to inspect such book and that said Davis was seeking information from said book for the purpose of prosecuting persons suspected of violating the laws of North Carolina." This refusal is made a misdemeanor by the Statute, and, on the record, there should be a conviction of defendant if this is a valid law. It has been so recognized with us in State v. Wilkerson, 164 N. C. p. 431 and in State v. Lee, 164 N. C. p. 435, and, on these and other authorities applicable, we are of opinion that the Court below erred in directing that a verdict of not guilty should be entered.

It is chiefly urged against the validity of the Statute and the attempted procedure under it that spirituous liquors, in certain instances, being still recognized as legitimate subject of interstate commerce, is protected from such interference by the commerce clause of the Federal Constitution and authoritative decisions construing it and that such protection continues until a given shipment
53 is delivered to the consignee in a continuous course of transit, citing, among other cases, McNiel v. So. Ry., 202 U. S. p. 543; Leisy v. Hardin, 135 U. S. p. 100; Bowman v. R. R., 125 U. S. p. 465 and other cases.

Prior to the enactment of the Webb-Kenyon law, this position might very well have been recognized as controlling, but it is an established principle that, when a Statute contains a definite grant of power, it will be so construed as to authorize all things necessary to accomplish the expressed purpose of the grant. Dewey v. R. R., 142 N. C. at page 400, citing Sutherland on Statutory Construction, Sections 341-43, pp. 427 et seq. (erroneously printed in Dewey's case as p. 578), and Enlich on Interpretation of Statutes, Sec. 418. And this Statute, as we have endeavored to show, having made certain interstate shipments of intoxicating liquors illegal and brought the same within the Police Power of the State as soon as they come within its territory, should be held to confer upon the State authorities the right to make the rules and regulations required and reasonably designed to make such power effective. The Wilson Act, as we have seen, brought these liquors under State control as soon as delivered to the consignee and to hold as defendant contends that the Webb-Kenyon Act did no more than this would be to deprive the written statute, enacted after full and extensive discussion and passed over a President's veto, of any and all significance. And, to set aside a regulation of this character, intended and reasonably calculated to enable the State's officers and agents to ascertain whether interstate shipments of whiskey are or are not within State control and subject to State regulation, would well nigh render the Statute of no practical value to the communities it was intended to benefit. The regulation now objected to puts no burden on interstate commerce but is only a police regulation, reasonably designed to carry out the purpose of the Statute and make effective the power referred

to the State by reason of the Federal enactment and comes well within the principle on which quarantine and inspection and other State and local laws and regulations are based and upheld, many of them stated with approval in the Minnesota rate cases, 230
54 U. S. pp. 352-402-406-408; Mo. Pac. Ry. v. Lanabee Mills, 211 U. A. p-. 612-22 and other cases of like purport.

It is further contended not only that this State Legislation invades a field exclusively referred by the Constitution to Federal regulation but that, on this particular subject, Congress has specially acted and that this State Legislation is in direct violation of the Federal Statute intended to control the matter and by which interstate carriers are prohibited from keeping any "accounts, records or memoranda other than those prescribed by the Interstate Commerce Commission, Sec. 20 of the Act to Regulate Commerce, Chap. 104, Sec. 20, Laws U. S., 1887, and amendments thereto in Sec. 8592, 4 Compiled Statutes U. S., pp. 3872 and 3873.

If it be conceded that there is direct conflict between the State Statute and the provision of the Federal law concerning this subject and we are right in the position that, when Congress made certain interstate shipments of intoxicating liquor illegal and referred the regulation thereof to the police power of the State, it thereby granted the incidental right to make this power effective, in that case the Webb-Kenyon law, being the later expression of the Congressional will, might very well be construed to modify to that extent the former Federal laws and regulations on the subject. But, in fact, there is no conflict. Taking judicial notice of the regulations of the action of the Interstate Commerce Commission, which we are permitted to do, when the regulations of an important governmental department, made pursuant to a public Statute and designed and intended to control the general public, have the force of a public law, State v. R. R., 141 N. C. p. 846, we know that, pursuant to this public Statute, the Interstate Commerce Commission have required Interstate Carriers to keep a standard and uniform set of books, showing the movements of traffic, and that it is done with a view to facilitate examination by official agents and to remove or minimize as far as possible the opportunity to discriminate among shippers, and there is nothing in this State Statute that in any way militates against the requirement or purpose of such regulation. The book required by the State law is simply an excerpt from the books
55 which the carrier is required to keep by the Commission and, recognizing this, the facts show that the defendant had actually kept the book in this instance. Being, as stated, only an extract from the Carrier's general records, such a book is no burden on Commerce but only a reasonable police regulation, necessary to the effective regulation and control of a subject submitted to it by the Federal law.

We are referred on the argument to a Federal statute, 36 St. L., 553; 1 Fed. statute, Anno. Supp., 1912, p. 122, 4 Compiled St., Secs. 8583, Sub. Sec. 6, that which forbids disclosures as to interstate shipments without consent of the shipper, which may be used by competitors, to the shipper's disadvantage. If it be assumed that this Statute is

otherwise relevant, the act itself contains the proviso: "That nothing in this act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any State or Federal Court or to any officer or agent of the U. S. or of any State or Territory in the exercise of his powers "or to any officer or other duly authorized person, seeking such information for persons charged with or suspected of crime, etc."

The State Statute provides that the book required to be kept shall be open to any officer or citizen of the State during business hours and this constitutes any citizen or authorized agent of the State for the purpose indicated, bring the applicant, in the present instance, R. L. Davis, directly within the intent and meaning of the provision in the Federal law.

It is well understood that offenders against regulations of this character are insistent, enterprising and elusive and we see no reason why the State should not commit the duty to any of its citizens as being required to a proper enforcement of the law on the subject.

The matter having been referred to the police power of the State, the question of method must be left largely to the State's discretion, entirely so, unless the regulation should offend against some Constitutional principle. The one in question here, as we have endeavored to show and owing to the Webb-Kenyon Act, is not within the
56 Commerce Clause of the Federal Constitution; no more is it inhibited by the 14th Amendment, which has been repeatedly held not to impair the exercise of the Police Power. In Re Converse, 137 U. S., 624; Barbier v. Connolly, 113 U. S. p. 27, and the provision constituting any citizen an authorized agent of the State for the enforcement of the law is not near so searching or stringent as many police regulations which have been approved by the Courts. Patson v. Pa., 232 U. S. p. 138; Silz v. Hesterburg, 211 U. S. 31; Lawton v. Steele, 152 U. S. p. 133. This last upholding a law of N. Y. which authorized any person to destroy fish-nets, set or maintained on the waters of the State in violation of the State Statutes. A principle applied in our own State in Daniels v. Horner, 139 N. C. p. 219. There are also many decisions sustaining Legislation by which the production and examination of books have been compelled and provided for. Interstate Commerce Commission v. Baird, 194 U. S. p. 25; In Re Chapman, 166 U. S., 661; Santa Fe R. R. v. Davidson et al., 149 Fed. p. 603. And it will be noted further that the State Statute, Sec. 7, contains provision that no person testifying shall be prosecuted for any offense done or participated in by him nor shall any discovery made by such witness be used against him in any penal or criminal action.

In this connection, we were cited by counsel for defendant to the case of Ezell v. City of Atlanta, 140 Ga. p. 195, in which a municipal ordinance of the city, requiring carriers, on receipt of spirituous liquors, etc., to make out a list and report same to the police authorities, was declared void by the Supreme Court of Georgia. This decision was made on the ground that the ordinance in question was an unwarranted interference with Interstate Commerce and in violation of Sec. 20 of the Interstate Commerce Act and the amendments to

the same. The requirements of the said ordinance are much more elaborate and exacting than the provision of the State Statute which we are considering and the same might be distinguished on the ground that the ordinance amounted to a burden on Interstate Commerce. The case, however, was presented on facts occurring
57 before the passage of the Webb-Kenyon law and the Court is careful to note that the effect of that law on the question was in no wise considered.

It was finally insisted that the State Statute is in conflict with the Federal Criminal Code, Secs. 238 and 239, on the ground that the first prohibits delivery of these shipments to any one but the consignee or on his written order whereas the State law requires an addition that the name of the recipient shall be signed in the book, etc., and the second, in effect, forbids the shipment of whiskey C. O. D. But it will be observed that both of these provisions of the Federal Code are prohibitive in character and the subsequent Federal Legislation, having made certain shipments of whiskey illegal and placed them under the Police Power of the State, including the right to make all rules and regulations concerning them reasonably required to make its control effective, there is nothing to prevent the State from making further regulations on the subject which do not conflict but are in addition to the Federal requirements.

For the reasons stated and on the facts established, we are of opinion that the Court below should have held the defendant guilty.

This will be certified that a general verdict of guilty be entered below and the Court proceed to judgment.

Reversed.

Defendant's Appeal.

HOKE, *Judge:*

It is the established position with us that no appeal lies for defendant in a criminal case except from a judgment on conviction or plea of guilty or some judgment against him in its nature final. State v. Ford, at the present term; State v. Andrews, 166 N. C. p. 349; State v. Webb, 155 N. C. p. 426. The appeal of the defendant, therefore, must be dismissed but without prejudice to the right to have its positions considered and its rights made available by proper appellate procedure on the entry of judgment below as indicated in the State's appeal.

Appeal dismissed.

58 NORTH CAROLINA:

Supreme Court, February Term, 1915, Wake County.

No. 241.

STATE
v.
SEABOARD AIR LINE RAILWAY.

Judgment.

This cause came on to be argued upon the transcript of the record from the Superior Court of Wake County and on motion of the State to dismiss defendant's appeal; upon consideration whereof, this Court is of opinion that there is error in the record and proceedings of said Superior Court, and that the appeal of the defendant should be dismissed.

It is, therefore, considered and adjudged by the Court here, that the opinion of the Court as delivered by the Honorable W. A. Hoke, Justice, be certified to the said Superior Court, to the intent that the judgment be reversed and general verdict of guilty entered, and that the appeal of defendant be dismissed.

And it is considered and adjudged further, that the defendant do pay the costs of the appeal in this Court incurred, to-wit, the sum of thirty four and 85/100 dollars ($34.85), and execution issue therefor.

(S.) J. L. SEAWELL,
Clerk of the Supreme Court.

A true copy:

59 *Certificate.*

SUPREME COURT OF NORTH CAROLINA, *ss:*

I, J. L. Seawell, Clerk of the Supreme Court of North Carolina, do hereby certify the foregoing to be a full, true and perfect copy of the record and proceedings in the case of State of North Carolina vs. Seaboard Air Line Railway, as the same now appears from the original on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at office in Raleigh, N. C., this 24th day of February, 1915.

[Seal of the Supreme Court of the State of North Carolina.]

J. L. SEAWELL,
Clerk of the Supreme Court of North Carolina.

Endorsed on cover: File No. 24,598. North Carolina Supreme Court. Term No. 380. Seaboard Air Line Railway, plaintiff in error, vs. The State of North Carolina. Filed March 3d, 1915. File No. 24,598.

Office Supreme Court, U. S.
FILED
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JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 72. 18

SEABOARD AIR LINE RAILWAY COMPANY

vs.

STATE OF NORTH CAROLINA.

MOTION TO PASS.

Counsel for the plaintiff in error and for the defendant in error join in this motion to pass the above entitled cause and assign as grounds for this motion the following: A consideration of the questions in this case will require a discussion of the constitutionality, construction and application of an act of Congress of March 1, 1913, Chapter 90, 37 Stat. at L. 699, entitled: "An act divesting intoxicating liquors of their interstate character in certain cases," known as the Webb-Kenyon Law, and counsel are advised that the question of the constitutionality of this act has been presented to the court in cases now pending on writ of error to the Supreme Court of Appeals of West Virginia and it will greatly facilitate the argument of this case if it is post-

poned until after this court has rendered its opinion upon the constitutionality of the Webb-Kenyon Law.

It is further moved by counsel for the plaintiff in error and the defendant in error that if the motion to pass this case be granted, then this case shall be reinstated by the clerk, as provided in Rule 26 of the rules of this court, within thirty days after the rendition of the decision of the court upon the constitutionality of the Webb-Kenyon Law.

Respectfully submitted,

MURRAY ALLEN,
Attorney for Plaintiff in Error.
T. W. BICKETT,
Attorney for Defendant in Error.

[Endorsed:] Seaboard Air Line Railway Company *vs.* State of North Carolina. No. 72. October term, 1916. Motion to Pass.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1917

SEABOARD AIR LINE RAILWAY,
Plaintiff in Error,
v.
STATE OF NORTH CAROLINA,
Defendant in Error.
} No. 18

In Error to the Supreme Court of the State of North Carolina

Brief of Plaintiff in Error

STATEMENT OF THE CASE.

This is a writ of error to the Supreme Court of North Caroline to review a judgment of that court reversing a judgment of "Not guilty" rendered by the Superior Court of Wake County.

The following bill of indictment was found by the grand jury at May Term, 1914, of the Superior Court of Wake County, North Carolina:

"The jurors for the State upon their oath present: That Seaboard Air Line Railway, a railroad corporation and common carrier of intra- and interstate freight, doing business and having a station in the city of Raleigh, Wake County,

State of North Carolina, and having on the 1st day of January, 1914, prior and subsequent to said date transported over and on its line of railroad shipments of spirituous and malt liquor from points in the State of Virginia to its station in the said city of Raleigh, county and State aforesaid, and having kept a record of such shipments of spirituous and malt liquors transported as aforesaid, with the names of the consignors, consignees, date of the receipt and delivery of said shipments and to whom delivered, required by the laws of North Carolina, on the first day of January, in the year of our Lord one thousand nine hundred and fourteen, with force and arms, at and in the county of Wake and State of North Carolina, unlawfully and wilfully did fail and refuse to exhibit to, and fail and refuse to permit to be inspected by R. L. Davis, after demand had been made by him, the said R. L. Davis, to inspect said record of said Seaboard Air Line Railway, containing a record of the shipments of spirituous and malt liquors transported by said railroad over its line of railroad from the State of Virginia to the city of Raleigh, Wake County, North Carolina, against the form of the statute in such case made and provided, and against the peace and dignity of the State."

When the case was called for trial, and before the defendant had entered any plea, the defendant moved to quash the indictment for reasons set forth in a written motion to quash indictment, which is set out in full at page 14 of the printed record. This motion was overruled, and defendant excepted.

The State offered the following evidence:

R. L. Davis, a witness for the State, testified that he is a citizen and resident of Raleigh, Wake County, North Carolina; that prior to the indictment in this action, he being at that time a citizen of the city of Raleigh, county of Wake, State of North Carolina, went to the office of the defendant company at Raleigh, N. C., during its business hours, and while the said office was open, and demanded of the agent that he be allowed to inspect the book kept by the defendant showing shipments of liquor from towns outside of the State of North Carolina to the city of Raleigh; that he was not an officer;

that the agent of the defendant stated that he was instructed to and did refuse to allow the witness to make the inspection which he had requested and demanded; that witness had no legal process and did not make any demand under any legal process, and at the time of the alleged demand he was neither a State nor Federal officer of any kind, of any State or Territory; that at the time he made such demand he was seeking information from the said book for the purpose of prosecuting persons suspected of violating the law of North Carolina; that at the time said demand was made he was seeking general information as to shipments of whiskey into the city of Raleigh from points in another State, and that he had in his mind especially an effort to see what evidence could be procured against one or more specified parties in the city of Raleigh, meaning by the words "general information" that he was seeking to ascertain who were the consignees of liquor and the quantities they were receiving for the purpose of prosecuting such parties as may be charged or suspected with the violation of the prohibition laws of the State; that at the time he made a demand for the inspection of the book he had no authority except that which existed, if any, by virtue of the fact that he was at that time a citizen of the State. (Printed Record, page 24.)

Defendant, in open Court, admits that it had in the office of its agent at Raleigh a book of the entries of liquor shipments from the State of Virginia and other States, as provided by section 5, chapter 4 of the Public Laws of North Carolina of 1913.

The defendant offered no evidence, and at the conclusion of all the evidence defendant moved to dismiss the action and for judgment of nonsuit upon the grounds set forth in written motion filed, which appears in full at page 18 of the record. This motion was overruled, and defendant excepted. At the conclusion of the evidence it was agreed that a special verdict might be found by the jury, and the jury returned the following special verdict:

SPECIAL VERDICT.

"We, the jurors sworn and empaneled in this case, return the following special verdict in this case, the defendant having agreed that a special verdict might be found:

"We find that R. L. Davis, on a date prior to the starting of this prosecution, he being at that time a citizen of the county of Wake, State of North Carolina, went to the office of the defendant company during its business hours, and while said office was open, and demanded of the agent that he be allowed to inspect the book kept by the defendant showing shipments of liquor from points outside of the State of North Carolina to the city of Raleigh.

"We further find that the said Davis was not an officer.

"We further find that the agent of the defendant stated that he was instructed to and did refuse to allow the said Davis to make the inspection which he had requested and demanded.

"We further find that the said Davis had no legal process and did not make any demand under any legal process, and at the time of the alleged demand he was neither a State nor Federal officer of any kind of any State or Territory.

"We further find that at the time the said Davis made such demand, he was seeking information from said book for the purpose of prosecuting persons suspected of violating the law of North Carolina.

"We further find that at the time said demand was made that said Davis was seeking general information as to shipments of whiskey into the city of Raleigh from points in another State, and that he had in his mind especially an effort to see what evidence could be procured against one or more specific parties in the city of Raleigh, meaning by the words 'general information,' that he was seeking to ascertain who were the consignees of liquor and the quantities they were receiving, for the purpose of prosecuting such parties, as may be charged or suspected with the violation of the prohibition laws of the State.

"We further find that the witness R. L. Davis, at the time

he made a demand for an inspection of the book, had no authority except that which existed, if any, by virtue of the fact that he was at that time a citizen of the State.

"If, upon the foregoing facts the Court is of the opinion that the defendant is guilty, then we say for our verdict that the defendant is guilty; if upon said facts the Court is of opinion that the defendant is not guilty, then we find that the defendant is not guilty." (Record, page 22.)

Upon this special verdict the Court adjudged defendant not guilty. The State excepted and appealed. The Supreme Court of North Carolina reversed this judgment in an opinion by Justice Hoke. (Record, page 31; 169 N. C., 295.)

Specifications of Error.

The plaintiff in error specifies and relies upon the following errors:

1. For that the Supreme Court of North Carolina erred in its construction of a statute of the United States enacted by Congress February 4, 1887, known as the Act to Regulate Commerce, as amended, and particularly section 1, as amended June 29, 1906, April 13, 1908, and June 18, 1910, and section 5, as amended June 29, 1906, and June 18, 1910, and section 20.

2. For that the Supreme Court of North Carolina erred in its construction of a statute of the United States, known as the Wilson Act, chapter 728, 26 Statutes at Large, 313, U. S. Comp. Stat., 1901, page 3177.

3. For that the Supreme Court of North Carolina erred in its construction of statutes of the United States, sections 238 and 239 of the Criminal Code of the United States.

4. For that the Supreme Court of North Carolina erred in its construction of the statute of the United States, enacted March 1, 1913, chapter 90, 37 Statutes at Large, 699, known as the Webb-Kenyon Law.

5. For that by these errors the Supreme Court of North Carolina decided against the rights set up and claimed by your petitioner under the said statutes and denied to your petitioner

a correct construction, interpretation and application of the provisions of said statutes.

6. For that the Supreme Court of North Carolina erred in reversing the judgment in this case because it denied to plaintiff in error the right, privilege or immunity of being governed in respect of its violation of the statute of the State of North Carolina, section 5, chapter 44, Public Laws of 1913, solely by the Constitution of the United States, section 8, article I, and the Act of Congress of February 4, 1887, as amended, known as the Act to Regulate Commerce, and the Wilson Act, chapter 728, 26 Statutes at Large, 313, the Act of Congress, known as the Webb-Kenyon Law, 37 Statutes at Large, 699, and sections 238 and 239 of the Criminal Code of the United States, as properly construed, and in adjudging the plaintiff in error guilty of a violation of said statute of the State of North Carolina by an erroneous construction of said statutes of the United States, thereby denying the plaintiff in error, Seaboard Air Line Railway, the right, privilege or immunity aforesaid, which it duly and specially set up in this proceeding.

The said errors complained of by which the plaintiff in error was denied protection, rights, privileges, and immunities created by or arising under article 1, section 8, of the Constitution of the United States, conferring upon Congress the power to regulate commerce among the States and the statutes of the United States, enacted under the authority thereof, which said protection, rights, privileges and immunities were specially claimed, set up and relied upon in this proceeding, are more specifically set forth as follows:

7. For that it is charged in the indictment and appears from the evidence and special verdict that the defendant on the first day of January, 1914, prior and subsequent to said date, transported over and on its line of railway shipments of spirituous and malt liquors from points in the State of Virginia to its station in the city of Raleigh, Wake County, North Carolina, and having kept a record of such shipments of spirituous and malt liquors transported as aforesaid, with the names of the consignors, consignees, date of the receipt and delivery of said

shipments, and to whom delivered, required by the laws of North Carolina, on the 1st day of January, 1914, failed and refused to exhibit to, and failed and refused to permit to be inspected by R. L. Davis, after demand had been made by him, the said R. L. Davis, to inspect said record of said Seaboard Air Line Railway containing a record of the shipments of spirituous and malt liquors transported by said railway over its line of railroad from the State of Virginia to the city of Raleigh, Wake County, State of North Carolina, and it appears from the evidence that the shipments involved are shipments of interstate commerce, and the defendant cannot be required by statute or by other action on the part of the State of North Carolina to keep records of interstate shipments of spirituous and malt liquor, with the names of consignors, consignees, date of the receipt and delivery and to whom delivered, as required by the laws of North Carolina, and any statute which requires such record to be kept is in violation of Article I, section 8, of the Constitution of the United States, conferring upon Congress the power to regulate commerce among the several States.

8. For that it is charged in the indictment and appears from the evidence and special verdict that the defendant failed and refused to permit R. L. Davis to inspect its record of the receipt and delivery of shipments of liquor from the State of Virginia to Raleigh, N. C., and this evidence fails to establish the commission of a crime, because the said R. L. Davis has no right or authority to inspect said record, and the defendant is prohibited by the Act to Regulate Commerce, enacted by the Congress of the United States, February 4, 1887, section 15, as amended June 29, 1906, and June 18, 1910, from permitting the said R. L. Davis to inspect its records of interstate shipments of liquor, and it is made unlawful by said section for the defendant knowingly to disclose or permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quality, destination, consignee or routing of any property tendered or delivered to the defendant for interstate transportation, which information may be used to

the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor.

9. For that the evidence and special verdict fail to establish the commission of a crime, because in refusing to permit the inspection of its records of shipments of liquor from the State of Virginia to Raleigh, Wake County, North Carolina, the defendant is acting in obedience to section 15 of the Act to Regulate Commerce, enacted by Congress of the United States February 4, 1887, as amended June 29, 1906, and June 18, 1910; and an act done in obedience of an act of Congress, enacted in accordance with the power to regulate commerce among the several States conferred by the Constitution of the United States upon Congress, cannot constitute a crime, although such conduct may be violative of a State statute.

10. For that the statute enacted by the Legislature of North Carolina, chapter 44, Public Laws of 1913, section 5, upon which this action is based, in so far as it applies to shipments from the State of Virginia to Raleigh, Wake County, North Carolina, is unconstitutional, null and void, because it is an attempt on the part of the State to regulate commerce, and is an unlawful interference with such commerce, in that it imposes as a condition precedent to the delivery of a shipment of liquor from another State that the carrier shall keep a separate book in which shall be entered immediately upon receipt thereof the name of the person to whom the liquor is shipped, the amount and kind received, the date when received, the date when delivered, by whom delivered, and to whom delivered, and the consignee is required to sign his name or mark his name before delivery can be made in violation of Article I, section 8, of the Constitution of the United States, which confers upon Congress of the United States the power to regulate commerce among the several States.

11. For that the statute enacted by the Legislature of North Carolina, chapter 44, Public Laws of 1913, section 5, upon which this action is based, in so far as it applies to shipments from the State of Virginia to Raleigh, Wake County, North

Carolina, is unconstitutional, null and void, because Congress of the United States, by the Act to Regulate Commerce, enacted February 4, 1887, as amended, and particularly section 1, as amended June 29, 1906, April 13, 1908, and June 18, 1910, and section 15, as amended June 29, 1906, and June 8, 1910, and by the enactment of the Wilson Act, chapter 728, 26 Stat. at L., 313, U. S. Comp. Stat., 1901, p. 3177, and by the enactment of sections 238 and 239 of the Criminal Code of the United States, and other statutes, has enacted legislation which occupies the field of regulation of the transportation of interstate commerce, and the keeping of records relating thereto, including the transportation and delivery and records relating to interstate shipments of liquors, and if the State of North Carolina had the power to enact this statute and make it applicable to interstate shipments, such power was destroyed by the action of Congress in enacting the said statutes, in the exercise of the power conferred by Article I, section 8 of the Constitution of the United States.

12. For that the statute enacted by the Legislature of North Carolina, chapter 44, Public Laws of 1913, section 5, upon which this action is based, in so far as it applies to shipments from the State of Virginia to Raleigh, Wake County, North Carolina, is unconstitutional, null and void, because a compliance with its provisions by permitting a citizen of the State, county, or municipality to inspect its records of interstate shipments of liquors will constitute a violation by the railroad company of section 15 of the Act to Regulate Commerce, enacted by Congress of the United States, February 4, 1894, as amended June 29, 1906, and June 18, 1910.

13. For that the statute enacted by the Legislature of North Carolina, chapter 44, Public Laws of 1913, section 5, upon which this action is based, in so far as it applies to shipments of liquors from the State of Virginia to Raleigh, Wake County, North Carolina, is violative of Article I, section 8, of the Constitution of the United States, and is null and void, and an indictment thereunder for the refusal to permit R. L. Davis to inspect the records of the receipt and delivery of shipments

of liquor from the State of Virginia to Raleigh, Wake County, North Carolina, cannot be maintained.

14. For that the Webb-Kenyon Law, enacted by Congress March 1, 1913, chapter 90, 37 Statutes at Large, 699, does not have the effect of divesting intoxicating liquor altogether of its interstate character, thereby permitting the laws of the State into which it is transported to operate upon it immediately upon its crossing the State line, and the Supreme Court of North Carolina erred in so holding.

15. For that the shipments of intoxicating liquor required by the statute of North Carolina to be recorded and the record of which is open to inspection by any citizen of North Carolina do not fall within the cases referred to in the Webb-Kenyon Law, and their character as interstate shipments is not affected thereby, and they are subject to every protection accorded other articles of interstate commerce and to every right, privilege and immunity created by or arising under the Constitution of the United States, and particularly under Article I, section 8, and the statutes enacted under the authority conferred thereby upon Congress, which protection, rights, privileges and immunities were specially claimed, set up and relied upon in this proceeding.

Questions in the Case.

The indictment in this case is based upon chapter 44, Public Laws of North Carolina of 1913, known as the "Search and Seizure Law," and section 5, which is the particular section alleged to have been violated, is as follows:

> "All express companies, railroad companies, or other transportation companies doing business in this State are required to keep a separate book in which shall be entered immediately upon receipt thereof the name of the person to whom the liquor is shipped, the amount and kind received, and the date when received, the date when delivered, by whom delivered, and to whom delivered, after which record shall be a blank space, in which the consignee shall be required to sign his name, or if he cannot write,

shall make his mark in the presence of a witness, before such liquor is delivered to such consignee, and which said book shall be open for inspection to any officer or citizen of the State, county, or municipality any time during business hours of the company, and said book shall constitute *prima facie* evidence of the facts therein and will be admissible in any of the courts of this State. Any express company, railroad company, or other transportation company or any employee or agent of any express company, railroad company or other transportation company violating the provisions of this section shall be guilty of a misdemeanor; Provided, upon the filing of a certificate signed by a reputable physician or two (2) reputable citizens that the consignee is unable, by reason of sickness or infirmities of age, to appear in person, then the said company is authorized to deliver any package to the agent of said consignee, and the agent shall sign the name of the consignee and his own name, and the certificate shall be filed of record."

Plaintiff in error contends that the judgment of the Supreme Court of North Carolina is erroneous for the following reasons:

I. Section 5 of the North Carolina Search and Seizure Law, ch. 44, Public Laws of 1913, is void because it is an attempt on the part of the State to regulate interstate commerce, in that it imposes as a condition precedent to the delivery of a shipment of liquor that the carrier shall keep a separate book in which shall be entered immediately upon receipt thereof the name of the person to whom the liquor is shipped, the amount and kind received, the date when received, the date when delivered, by whom delivered and to whom delivered, and the consignee is required to sign his name before delivery can be made.

II. In order to comply with the provisions of section 5 and permit the inspection of its records of interstate shipments of liquor by a citizen, the defendant would of necessity violate the provisions of section 15 of the Act to Regulate Commerce,

which is designed to prohibit giving such information except under specified circumstances.

III. The Webb-Kenyon Law cannot affect the application of these principles to shipments destined to points in Wake County, because by its language it relates to liquors intended to be received, possessed, sold or used in violation of the law of the State, and it is not unlawful to receive or possess liquor in any quantity in Wake County.

ARGUMENT.

I.

SECTION 5, CHAPTER 44 OF PUBLIC LAWS OF NORTH CAROLINA OF 1913 INTERFERES DIRECTLY WITH INTERSTATE COMMERCE.

Intoxicating liquor is a legitimate article of commerce, and is subject to the control of the Interstate Commerce Act up to the time of delivery to the consignee unless it is intended to be received, possessed, sold, or in some manner used in violation of State law.

Adams Express Co. v. Kentucky, 238 U. S., 190.
Clark Distilling Co. v. Western Maryland Ry. Co., 242 U. S., 311.
Rhodes v. Iowa, 170 U. S., 412.

Transportation of interstate commerce is not concluded until delivery to the consignee, and a shipment moving in interstate commerce is not subject to State regulation prior to the time of such delivery.

Yazoo & M. V. R. Co. v. Grocery Co., 227 U. S., 1.
St. L. I. M. & S. R. Co. v. Edwards, 227 U. S., 265.
C. R. I. & P. R. Co. v. Elevator Co., 226 U. S., 426.
L. & N. R. Co. v. Brewery Co., 223 U. S., 82.
Rhodes v. Iowa, 170 U. S., 412.
Wilkerson v. Rahrer, 140 U. S., 545.
Bowman v. Chicago & Northwestern R. Co., 125 U. S., 465.

Any exercise of State authority which directly regulates interstate commerce is repugnant to the commerce clause of the Constitution.

Atlantic Coast Line R. Co. v. Wharton, 207 U. S., 328.

"To the extent that the subjects of the commerce power are in their nature national or admit of only one uniform system or plan of regulation, congressional legislation alone is demanded (*Coley v. Board,* 12 How., 299); and with reference to such subjects no action by Congress is tantamount to a declaration that they shall remain free and untrammelled by interference by State legislation (*Western Union Tel. Co. v. Call Pub. Co.,* 181 U. S., 92.)"

Welsh v. Dean (Mont.), 141 Pac., 548.

In *Adams Express Co. v. Kentucky,* 206 U. S., 129, a statute making penal all shipments of liquor "to be paid for on delivery, commonly known as C. O. D. shipments," was held invalid as an attempt to regulate commerce, and in *Adams Express Co. v. Kentucky,* 214 U. S., 219, an act of the Legislature of Kentucky making it an offense to deliver, sell or give liquor to any person who is an inebriate was declared invalid when applied to an interstate shipment.

We submit that it follows from these decisions that section 5 of chapter 44, Public Laws of North Carolina of 1913, is invalid as a regulation of interstate commerce in that it requires the railroad company to keep a separate book in which must be entered immediately upon receipt thereof the name of the person to whom the liquor is shipped, the amount and kind received and the date when received, the date when delivered, and by whom delivered, and the consignee is required to sign his name before the carrier can deliver the shipment. This is a hindrance of the carrier in making delivery and an interference with the right of the consignee to receive the shipment. Its effect is not merely incidental. It operates to deprive the carrier of the right to deliver and the consignee to receive an interstate shipment unhampered by the details of such regulation by the State.

CONGRESS HAVING OCCUPIED THE FIELD, THE RIGHT OF THE STATE TO REGULATE THE DELIVERY OF INTERSTATE SHIPMENTS IS DESTROYED.

But should it be held that we are not correct in our contention that this legislation interferes with interstate commerce in its "fundamental aspect," and that the power to regulate the delivery of an interstate shipment is concurrent in Congress and in the State, the power of the State has been destroyed by the action of Congress in entering the field of regulation in such manner as to indicate its intention to take charge and control of the subject matter. In a recent case this Court said:

> "The elementary and long established doctrine is that there can be no divided authority over interstate commerce and that the regulations of Congress on that subject are supreme. It results, therefore, that in a case where, from the nature of certain subjects, the State may exert authority until Congress acts, under the assumption that Congress, by inaction, has tacitly authorized it to do so, action by Congress destroys the possibility of such assumption, since such action, when exerted, covers the whole field, and renders the State impotent to deal with the subject over which it had no inherent, but only permissive power."
>
> Chicago, R. I. & P. Ry. Co. v. Hardwick Farmers Elevator Co., 226 U. S., 426.

Again, it is held in *Southern Ry. Co. v. Reid,* 222 U. S., 424, that:

> "Inhibitive congressional legislation is not essential to exclude State legislation upon incidental matters relating to interstate commerce, with respect to which the States and Congress have a concurrent power. It is sufficient if the congressional legislation occupies the field of regulation."

This principle was applied to shipments of intoxicating liquors in *C. B. & Q. R. Co. v. Giles,* 235 Fed., 804, in which the Court says:

> "In view of the exclusive power of Congress over interstate commerce, and the fact that the interstate shipment of intoxicating liquors requires uniformity of regulation, the states are without power, as was attempted by Prohibition Act, Colo., sec. 10, to regulate the marking of intoxicating liquors."

We submit that an examination of congressional legislation will show not merely an occupation of the "field of regulation," but will disclose legislation directly affecting the very subject matter of section 5 of the North Carolina Search and Seizure Law and in conflict with its provisions.

We refer to the following statutes:

(a) Section 1 of the Act to Regulate Commerce.
(b) Section 20 of the Act to Regulate Commerce.
(c) The Wilson Act.
(d) Section 238 of the Criminal Code of the United States.
(e) Section 239 of the Criminal Code of the United States.

(a) Section 1 of the Act to Regulate Commerce.

By the enactment of the Act to Regulate Commerce and its amendments, Congress has manifested a clear intention to take control of the entire subject of the transportation of interstate freight. The original act (24 Stat. at L., 379, Chap. 104, U. S. Comp. Stat. Supp., 1911, p. 1284) declared that the term "transportation" should embrace all instrumentalities of shipment or carriage. By the Hepburn Act (34 Stat. at L., 548, Chap. 359, U. S., Comp. Stat. Supp. 1911, page 1288), amendatory of the act to regulate commerce, Congress declared that "the term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, or the use thereof and all services in connection

with the receipt, *delivery,* elevation and transfer in transit, ventilation, refrigeration, icing, storing and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through rates and just and reasonable rates applicable thereto."

In holding invalid an Arkansas statute imposing a *per diem* penalty upon the carrier for failure to notify the consignee promptly of the arrival of a shipment at destination, the United States Supreme Court, in an opinion by the Chief Justice, says:

> "As applied to interstate commerce, however, we think such penalties were not enforcible because of a want of power in the State to impose them, in view of the legislation of Congress existing at the time the alleged duty to give notice arose. Recently in *Chicago R. I. & P. R. Co. v. Hardwick Farmers' Elevator Co.* (226 U. S., 426, 33 Sup. Ct. Rep., 174), a regulation of the State of Minnesota enacted after the passage of the Hepburn Act (34 Stat. at L., 584, ch. 3591, U. S. Comp. Stat. Supp., 1911, p. 1288), imposing penalties on carriers for failing on demand to furnish a supply of cars for the movement of interstate traffic, was held invalid because of the absence of power in a State, in consequence of the Hepburn Act, to provide for such penalties. While the case before us concerns the power of a State over the delivery of cars in consummation of an interstate shipment, we, nevertheless, think that the Hardwick case is controlling because the legislation of Congress as clearly excludes the right of a State to penalize for failure to deliver interstate freight at the termination of an interstate shipment as it was found to prevent a State from penalizing for failure to furnish cars for the initiation of the movement of interstate traffic. This conclusion is necessary, since the amendment to Sec. 1 of the Act to Regulate Commerce, by which a definition is given to the term 'transportation' and which, in the

Hardwick case, was held to exclude the right of a State to penalize for the nondelivery of cars to initiate the movement of an interstate shipment, by its very terms embraces the obligation of a carrier to deliver to the consignee, and therefore by the same token excludes the right of a state to penalize on that subject."

St. Louis, I. M. & S. Ry. Co. v. E. H. Edwards, 227 U. S., 265.

(b) Section 20 of Act to Regulate Commerce.

"The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, *including the accounts, records, and memoranda of the movement of traffic* as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this act, and it *shall be unlawful for such carriers to keep other accounts, records or memoranda than those prescribed or approved by the Commission,* and it may employ special agents and examiners who shall have authority under the order of the Commission to inspect and examine any and all accounts, records and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees." [Italics added.]

Congress undoubtedly intended by this section to confer upon the Interstate Commerce Commission the power to prescribe the records of the delivery of interstate shipments to be kept by the carrier. Such records fall clearly within the language: "Records and memoranda of the movement of traffic." In defining "transportation," Congress has made it include *delivery* (see Sec. 1 of Act to Regulate Commerce), and the cases cited *supra* hold that interstate transportation is not complete until

delivery has been effected. Not only does this section confer such power upon the Interstate Commerce Commission, thereby divesting the State of the power to regulate the keeping of records relating to interstate shipments, but by specific language it is made unlawful for a carrier to keep any other records than those prescribed by the Commission.

Palmer v. Southern Exp. Co. (Tenn.), 165 S. W. Rep., 236.

(c) The Wilson Act.

The Wilson Act, Chap. 728, 26 Stat. at L. 313; U. S. Comp. Stat. 1901, p. 3177, as construed in the *Bowman case, supra,* releases the protection afforded intoxicating liquor as an article of interstate commerce upon delivery to the consignee. Congress, by this enactment, as construed, makes *delivery* to the consignee the beginning point of the State's power to regulate. The Wilson Act shows the intention on the part of Congress to retain exclusive control over interstate shipments of intoxicating liquors prior to delivery to the consignee.

Palmer v. Southern Exp. Co. (Tenn.), 165 S. W. Rep., 236.

(d) Section 238 of the Criminal Code of the United States.

"Any officer, agent, or employee of any railroad company, express company, or other common carrier, *who shall knowingly deliver or cause to be delivered to any person other than the person to whom it has been consigned, unless upon the written order in each instance of the bona fide consignee, or to any fictitious person, or to any person under a fictitious name,* any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind which has been shipped from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United

States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States or place noncontiguous to but subject to the jurisdiction thereof, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both." [Italics added.]

By this section of the Criminial Code, Congress specifically undertakes to regulate the delivery of interstate shipments of intoxicating liquors. It does not merely occupy the same field as that covered by Section 5 of the State statute, but there is one essential respect in which the two statutes are in direct conflict. Under the State statute delivery can be made *only to the consignee* and then as a condition precedent the consignee must sign his name on the book. Under the Federal statute delivery can be made *upon the written order of the bona fide consignee* and it is not required that any book shall be signed.

(e) Section 239 of the Criminal Code of the United States.

"Any railroad company, express company, or other common carrier, or any other person who, in connection with the transportation of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, shall collect the purchase price of any part thereof, before, on, or after delivery, from the consignee, or from any other person, or shall in any manner act as the agent of the buyer or seller of any such liquor, for the purpose of buying

> or selling or completing the sale thereof, saving only in the actual transportation and delivery of the same, shall be fined not more than five thousand dollars."

This section further shows the intention of Congress to occupy the field of regulation of the delivery of interstate shipments of liquors.

> Palmer v. Southern Exp. Co. (Tenn.), 165 S. W. Rep., 236.

THE EXERCISE OF THE POLICE POWER BY THE STATE DOES NOT JUSTIFY INTERFERENCE WITH INTERSTATE COMMERCE.

In Kansas City S. R. Co. v. Kaw Valley Drainage District, 233 U. S., 75, Justice Holmes, referring to the rule that a State statute which directly interferes with interstate commerce is void, says:

> "The decisions also show that the State cannot avoid the operation of this rule by simply invoking the convenient apologetics of the police power. It repeatedly has been said or implied that a direct interference with commerce among the States could not be justified in this way. 'The State can do nothing which will directly burden or impede the interstate traffic of the company or impair the usefulness of its facilities for such traffic.' *Illinois C. R. Co. v. Illinois*, 163 U. S., 142; *Austin v. Tennessee*, 179 U. S., 343, 349; *Atlantic Coast Line R. Co. v. Wharton*, 207 U. S., 328, 334."

In *McDermont v. Wisconsin*, 228 U. S., 115, Mr. Justice Day, after stating that the states have the power to protect their people against fraud or imposition by impure food or drugs and that in the exercise of this power they can make regulations not in conflict with the act of Congress, says:

> "While this is true, it is equally well settled that the state may not, under the guise of exercising its police power or otherwise, impose burdens upon or discrimi-

nate against interstate commerce, nor may it enact legislation in conflict with the statutes of Congress passed for the regulation of the subject, and if it does, to the extent that the state law interferes with or frustrates the operation of the acts of Congress, its provisions must yield to the superior Federal power given to Congress by the Constitution. *Texas & P. R. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 426; *Northern P. R. Co. v. Washington*, 222 U. S., 370; *Southern R. Co. v. Reid*, 222 U. S., 424; Second Employers' Liability Cases (*Mondou v. New York, N. H. & H. R. Co.*), 223 U. S., 1; 56 L. Ed., 327; 38 L. R. A. (N. S.), 44; *Savage v. Jones*, 225 U. S., 533."

In *Bowman v. Chicago Northwestern R. Co.*, 125 U. S., 465, the railroad company refused to receive a shipment of beer for transportation to a point in Iowa on the ground that it was prohibited from doing so by an Iowa statute providing no carrier should transport intoxicating liquors into that State "without first having been furnished with a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported or is consigned for transportation or within which it is to be consigned from place to place, certifying that the consignee or person to whom said liquor is to be transported, consigned, or delivered is authorized to sell such intoxicating liquors in such county," and that such certificate had not been furnished. The shipper sued the railroad company for damages and when the case reached the United States Supreme Court the Iowa statute was held an unconstitutional interference with interstate commerce. In speaking of the statute the court says:

"It is essentially a regulation of commerce among the States within any definition heretofore given to that term, or which can be given; and, although its motive and purpose are to perfect the policy of the State of

> Iowa in protecting its citizens against the evils of intemperance, it is none the less on that account a regulation of commerce."

In disposing of the contention that the provisions of Acts of Tennessee, 2d Extra Session, 1913, ch. 1, sec. 5, forbidding the delivery of an interstate shipment of liquor to any person other than the consignee, and section 9, subsection 5, prohibiting an interstate carrier from delivering intoxicating liquors unless the consignee presents a statement setting forth enumerated facts, are valid as the exercise by the State of its police power, the Supreme Court of Tennessee says:

> "It seems clear that section 5 of the act of 1913, in so far as it requires the certificate therein provided for, falls within the authorities referred to, and is void as a regulation of interstate commerce, imposing as it does a condition precedent, upon the exercise by the carrier of the right to make delivery, and upon the right of the consignee to receive delivery of the goods.
>
> "It is perceived, from the passage we have quoted out of *Bowman v. Railroad* (125 U. S., 488), that the provision in question cannot be upheld on the ground that it is an exercise of the police power of the State, since that power in a State cannot transcend the Constitution of the United States. *State v. Kelly,* 123 Tenn., 567-575. Nor can it be said that it has a mere incidental effect upon interstate commerce, and, therefore, under the authorities on that subject, must be held a harmless invasion of national power. Its action is direct, since it arrests delivery until the certificate is executed. * * * The certificate provided for in subsection 5 of section 9 is likewise void in so far as it applies to interstate shipments, on the ground that it is a regulation of interstate commerce; the reasons being the same as those set forth

in disposing of the question raised on the certificate required by section 5 of the act."

Palmer v. Southern Express Co. (Tenn.), 165 S. W. Rep., 236.

II.

COMPLIANCE WITH SECTION 5 OF THE STATE LAW WILL CONSTITUTE A VIOLATION OF SECTION 15 OF THE ACT TO REGULATE COMMERCE.

We have attempted to show that the transportation of intoxicating liquor is interstate commerce and entitled to all the protection and subject to all the provisions contained in the congressional legislation, known as the Act to Regulate Commerce, and that a State statute which attempts to regulate the delivery of intoxicating liquor is void as a regulation of such commerce. We come now to the second branch of our argument that if the carrier permits a person in the absence of the requisite authority, to secure the information contained in the record of interstate shipments of liquor kept in compliance with the State law, such conduct will constitute a specific violation of the provisions of the Mann-Elkins Law enacted by Congress June 18, 1910, section 15 of the Act to Regulate Commerce, as follows:

> "It shall be unlawful for any common carrier subject to the provisions of this Act, or any officer, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment, or prejudice of such shipper or consignee or which may improperly

> disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used; Provided, That nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under authority of any State or Federal Court, or to any officer or agent of the Government of the United States or to any officer of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information, given by a common carrier to another common carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of such carriers. Any person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than one thousand dollars."

In *Commonwealth v. White,* 166 Ky., 528, the Court of Appeals of Kentucky says:

> "Unquestionably the Mann-Elkins Law was designed for the protection of interstate commerce, and was an extension of the original Interstate Commerce Act of 1887. Under the operation of the original act of 1887, it was found that great abuses existed, and to prevent those abuses and to protect shippers from the injury resulting from the improper acts of the common carrier in disclosing information as to the transactions of shippers to their competitors, the amendment above referred to was enacted."

The jury in the case at bar found that R. L. Davis had no legal process and did not make any demand under any legal

process and at the time of the allegeed demand to see defendant's books he was neither a State nor a Federal officer of any kind of any State or Territory. The jury further found that R. L. Davis at the time of such demand had no authority except that which existed, if any, by virtue of the fact that he was at that time a citizen of the State.

It seems clear to us that if the defendant had permitted the inspection by R. L. Davis of its books containing a record of interstate shipments of intoxicating liquors, when he had no other authority than that of every other citizen of North Carolina, such conduct would have been a violation of the section of the Federal law which we have quoted.

This position is supported by the case of *Ezell v. City of Atlanta,* 78 S. E. (Ga.),821, in which it appeared that the city of Atlanta had enacted: "An ordinance requiring railway companies, express companies and all common carriers to report the receipts of any and all spirituous or malt liquors in quantities in excess of three gallons, and to permit the chief of police, and his officers acting under his authority to make an inspection of their books as to receipts of such liquors, and for other purposes." The validity of this ordinance was attacked upon the ground that in so far as it related to interstate shipments, it was repugnant to Section 15 of the Act to Regulate Commerce.

In sustaining the contention, the Supreme Court of Georgia says:

> "The provisions of the ordinance requiring the information to be given are general, and apply to every case of interstate shipment of liquors, and are not limited to any of the instances referred to in the proviso of the Act. This is illustrated by the facts of this case, where an effort is made to enforce the ordinance in circumstances not within the proviso. The police officer who demanded the report from Ezell as to certain interstate shipments of liquor was not acting under legal process issued under the authority of any State or

> Federal Court, nor was he an officer or agent of the United States, or of any State or Territory, acting in the exercise of his powers, nor was he an officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime. He had no warrant; no offense had been committed in his presence; he knew of no persons who had committed any offense against the State or the city; and, therefore, he was not acting, in demanding the report, as an arresting officer in the exercise of his powers to make arrests. No person had been charged with crime; in fact, no particular person had been suspected of committing a crime. The officer merely suspected that if he obtained the information sought, he would then have reasonable grounds to suspect that some one had or would violate the prohibition law. The Act of Congress under consideration does not give permission to common carriers engaged in interstate commerce, or their agents to furnish information such as the ordinance seeks as to interstate shipments, for the purpose of raising suspicion against some unidentified or unknown person or persons. But it permits such information to be given for the purpose of aiding the detection or prosecution of some particular person or persons already charged with or suspected of crime."

If an ordinance giving the police authorities power to require the carrier to divulge information in a general way as to interstate shipments of intoxicating liquor is repugnant to Section 15 of the Act to Regulate Commerce, we think it follows that this right cannot be conferred upon *every citizen of North Carolina.* There is no language in the Federal statute by way of proviso or otherwise that could be advanced as a defense to an indictment for violating its provisions by permitting a *citizen* to gather *ad libitum* information as to the names of consignees, and the quantity and character of intoxicating liquors transported in interstate commerce. It is true, the

jury found that R. L. Davis was seeking information for the purpose of prosecuting persons suspected of violating the law of North Carolina. But this is not sufficient to relieve the defendant from responsibility for a violation of Section 15 of the Commerce Act. In addition to seeking such information for the purpose stated, it is essential that he should be "an officer or other duly authorized person."

Applying the principles as expressed by the maxim *Noscitur a sociis* and the phrase *Ejusdem generis* to the construction of this section, we submit the words, "duly authorized person," will be found to mean a person having authority expressly conferred upon him in a manner similar to that in which the officer receives his authority. (Lewis, Southerland on Statutory Construction, sec. 22 *et seq.*) It would be most unusual if Congress intended that by one stroke of the pen, the State Legislature could confer upon every citizen of North Carolina the authority to make a blanket inspection of a railroad's books relating to the delivery of interstate freight. This would at once destroy the power of Section 15 to protect consignees. We submit that it was never intended by the proviso of this section that an officer or other person could make a general investigation of the books of a railroad company ascertaining information as to shipments consigned to parties who are not charged with or suspected of crime as well as to parties so charged or suspected. We contend that the plain purpose of the proviso is to relieve the railroad company from responsibility for making disclosures as to shipments *received by specific persons* charged with or suspected of crime. Would the proviso be a protection if in giving information to an officer or other duly authorized person of shipments received by a person charged with or suspected of crime the railroad at the same time gave information as to shipments received by a consignee not so charged or suspected, which information could be used to the detriment or prejudice of such consignee or which would improperly disclose his business transactions to a competitor? We submit that it would not, and that upon these facts, the railroad would be adjudged guilty of a viola-

tion of the Federal law. If we are correct in this, then, conceding R. L. Davis to be a "duly authorized person," he would not have the right to inspect the defendant's books and gather information as to shipments received by consignees who are not charged with or suspected of a violation of the laws of this State.

The enforcement of the prohibition law in North Carolina could not be affected by this interpretation of the Federal law. The Solicitor has ample authority to inquire into the unlawful sale of whiskey. Under North Carolina Revisal of 1905, Section 3534, he can apply to the Clerk of the Court and have subpœnas issued for such parties as may have knowledge of such sale and require them to testify as to their knowledge, and failure on the part of the Solicitor to use diligence in carrying out the provisions of this section subjects him to removal under Revisal, Section 3526.

It is true that the case of *Ezell v. City of Atlanta, supra,* arose prior to the enactment of the Webb-Kenyon Law, and the validity of the argument which we have just made is dependent upon the interpretation of that law. But we submit that these questions are not affected by the Webb-Kenyon Law for reasons which we will now advance.

III.

The Webb-Kenyon Law

In presenting our argument, we have treated intoxicating liquors as occupying a position similar to that of other commodities of interstate commerce, and therefore subject to the same rules and entitled to the same protection, except in so far as the status is changed by the Wilson Act. We have endeavored to show that the Wilson Act has been construed as removing interstate shipments of liquor from the protection accorded other interstate shipments only after delivery to the consignee. We come now to the contention of the defendant in error that a subsequent act of Congress, the Webb-Kenyon Law, has entirely removed intoxicating liquors from the opera-

tion of the principles of law applicable to ordinary shipments of interstate commerce, thereby leaving the States free to regulate the delivery of interstate shipments of such liquors.

The Webb-Kenyon Law has no application to shipments of intoxicating liquors unless such liquors are intended to be received, possessed, sold, or in some manner used in violation of state law.

> Adams Express Co. v. Kentucky, 238 U. S. 190.
> Clark Distilling Co. v. Western Maryland R. Co., 242 U. S. 311.

At the time of this prosecution it was in no sense a violation of the law of North Carolina to transport or deliver a shipment of intoxicating liquor in Wake County, however great the quantity. It was not a crime to be in possession of intoxicating liquors in any quantity. The law of North Carolina (Chapter 44, Public Laws of 1913, Section 2) prohibited the keeping of intoxicating liquors in possession for the purposes of sale and made the following facts *prima facie* evidence of a violation of this law:

"1. The possession of a license from the government of the United States to sell or manufacture intoxicating liquors; or

2. The possession of more than one gallon of spirituous liquors at any one time, whether in one or more places; or

3. The possession of more than three gallons of vinous liquors at any one time, whether in one or more places; or

4. The possession of more than five gallons of malt liquors at any one time, whether in one or more places; or

5. The delivery to such person, firm or corporation of more than five gallons of spirituous or vinous liquors, or more than twenty gallons of malt liquors within four successive weeks, whether in one or more places; or

6. The possession of intoxicating liquors as samples to obtain orders thereon."

In construing these provisions of the law in *State v. Wilkerson,* 164 N. C., 431, Mr. Justice Walker says:

> "It is not made unlawful for a person to have more than one gallon of spirituous liquor in his possession,

> but it is criminal to have possession of that quantity for the purpose of sale, and while the bare possession of so much may, in itself, and as a fact be innocent, it is yet made *prima facie* evidence of guilt under the statute."

It is held in this case that the burden of proof is upon the State to show beyond a reasonable doubt that the defendant had liquor in his possession for the purpose of sale and that this burden is not shifted by proof of possession of a quantity of liquor in excess of that fixed by the statute.

The case of *State v. Wilkerson, supra,* was approved by the Supreme Court of North Carolina in *State v. Randall,* 170 N. C., 757, decided December 15, 1915.

It seems to us to be clear from this construction of the law of North Carolina in force at the time of this prosecution that neither the transportation, delivery, receipt or possession of intoxicating liquors in any quantity in the County of Wake constituted a violation of the State law. The State law approves the transportation and delivery in limited quantities and only makes possession of a greater quantity *prima facie* evidence of a violation of law. The provisions of section 2 of the State law quoted above, are mere rules of evidence, effective only when vitalized by a trial and proof of possession of the prohibited quantity, and then the unlawfulness of such possession can only be determined by the verdict of a jury. (*State v. Barrett,* 138 N. C., 620.) There is nothing in the record in the present case from which it can be inferred that the shipments appearing on the records of the defendant railroad exceeded the quantity fixed by the State law. It is to be presumed that they did not. There is certainly nothing to show that such shipments were intended to be received, possessed, sold or in any manner used in violation of the State law. It is to be presumed that they were not. It follows, we submit, that every shipment on the record was a legitimate shipment of interstate commerce and included within the provisions of Section 15 of the Act to Regulate Commerce prohibiting carriers from divulging information as to freight transported in interstate

commerce, and subject in all other respects to the enactments of Congress with respect to such commerce.

In *Commonwealth v. White,* 166 Ky., 528, the exact question raised by this writ of error was presented to the Court of Appeals of Kentucky, and it was held that a state law requiring a record of all shipments of liquor to be kept by the carrier subject to public inspection at any time during business hours is in conflict with the provisions of the act of Congress known as the Mann-Elkins Law, passed June 18, 1910, and incorporated in the Interstate Commerce Law as Section 15. After discussing the Webb-Kenyon Law and its effect upon interstate shipments of intoxicating liquor, Chief Justice Miller says:

> "The protection of the commerce clause still attaches to all lawful interstate shipments of liquor; and, to bring the transaction involved in this controversy within the operation of the Webb-Kenyon Law, and divest it of the protection of the commerce clause of the Constitution, the court would have to presume, without proof, that the book which Porter requested to see contained a record of liquor intended to be received, possessed, sold or in some manner used in violation of the law of Kentucky. But, under well established principles of law, the contrary presumption must prevail in the absence of proof, and there is no proof here as to the character of the shipment. The carrier must take notice of the use for which liquor is intended, and if this use will violate the law of the State at the place of delivery, it may refuse to accept the shipment, or, having received it, may refuse to deliver it. But, as above stated, in the absence of proof upon the subject, it must be presumed that the carrier did not violate the State law, and consequently that the record in question is a record of shipments of liquors for lawful purposes. It follows, therefore, under the record before us, that the shipments in question must be treated as if they were lawful, and, consequently, fully invested with the pro-

tection afforded to interstate commerce by the commerce clause of the Constitution; and that the agent of the express company could not lawfully disclose, to a private citizen, any information concerning said shipments, except with the consent of the consignor and the consignee."

In disposing of the contention that the Webb-Kenyon Law authorized the States to regulate the delivery of intoxicating liquors, the Supreme Court of Tennessee says:

> "It is enough to say, for the disposition of the case before us, that it does not appear that the liquors shipped were intended to be sold, or used in violation of any law of the State; and therefore the act (Webb-Kenyon Law) does not apply to the present controversy."
>
> Palmer v. Southern Exp. Co. (Tenn.), 165 S. W. Rep., 236.

In *C. B. & Q. R. Co. v. Giles*, 235 Fed., 804, it is held that:

> "Webb-Kenyon Act (Act March 1, 1913, 37 Stat., 699) prohibiting in substance the shipment in interstate commerce of intoxicating liquor into any state which is intended by any person interested therein to be received, possessed, sold, or in any manner used either in the original package or otherwise in violation of the law of the State, does not warrant Prohibition Act, Colo., sec. 10, declaring that it shall be unlawful for any person, association, or corporation, or for any carrier, to ship or knowingly carry any intoxicating liquor to any point in the State, or from one point to another within the State without marking conspicuously on the package the words 'This package contains intoxicating liquor,' the Webb-Kenyon Act merely prohibiting the shipment of intoxicants intended to be used in violation of the State law, but not allowing the states to regulate that branch of interstate commerce."

Since this prosecution was instituted the legislature of North Carolina has enacted Chapter 97, Public Laws of 1915, making it unlawful to transport and unlawful to receive more than one quart of spirituous or vinous liquors and more than five gallons of malt liquors during the space of fifteen consecutive days. The statute, however, has no application to the facts of the case.

IF THE WEBB-KENYON LAW APPLIES TO SHIPMENTS IN EXCESS OF QUANTITY FIXED BY THE STATE LAW, THEN SECTION 5 OF THE NORTH CAROLINA SEARCH AND SEIZURE LAW IS CONSTITUTIONAL IN PART AND UNCONSTITUTIONAL IN PART.

Conceding that the Webb-Kenyon Law operates to prohibit transportation of shipments in quantities which, when in possession of the consignee, constitute *prima facie* evidence of an intent to sell, such act has no effect whatever on shipments in less quantity. Certainly such shipments are *interstate commerce* and subject to protection of the Interstate Commerce Act, and it is beyond the power of the State to interfere with the delivery of such shipments. And, similarly, it seems to us beyond controversy that it is unlawful for a carrier to give information of such shipments to a person who lacks authority under Sec. 15 of that Act. The most strained construction of the North Carolina Search and Seizure Law will fail to develop any theory upon which it is unlawful to receive or possess one gallon of spirituous liquors, or three gallons of vinous, or five gallons of malt liquors, at any one time, or to receive or deliver five gallons of spirituous or vinous liquors or twenty gallons of malt liquors, to one person within four successive weeks. The Webb-Kenyon Law admittedly has no application to interstate shipments of liquor which are not received, or possessed, or intended for sale in violation of the State law. So liquor in the quantities enumerated must necessarily stand upon the same footing as prior to the enactment of that law, and such shipments are, therefore, interstate commerce and

protected by the Commerce Act from State regulation until delivery to the consignee. We submit that as to such shipments Section 5 of the Search and Seizure Law is manifestly unconstitutional and void, and being void in part, it is void *in toto*. It includes within its provisions interstate shipments which the State has no power to regulate and if it should be conceded that interstate shipments in excess of the quantity fixed by the statute are, since the enactment of the Webb-Kenyon Law, subject to State regulation, yet the constitutional and the unconstitutional features of Section 5 are so inseparable that the entire section should fail.

State v. R. R., 212 Mo., 658

It was upon this ground the first Federal Employers' Liability Act was held invalid. That statute included within its terms all employees of an interstate carrier, and was not restricted in its operation to such employees only as were engaged in interstate commerce. It was held that Congress did not have power under the Commerce Clause to regulate the liability of an interstate carrier to an employee engaged in intrastate commerce, and that to such extent the act was unconstitutional. An attempt was made to save the statute by making it applicable only to such cases as would fall within the power of Congress to regulate. This attempt failed because of the force of the established principle that where the constitutional and the unconstitutional elements of a statute are so interlaced as to be incapable of separation the statute must fail. In Employers' Liability Cases, 207 U. S., 463, the United States Supreme Court says:

> "Concluding, as we do, that the statute, whilst it embraces subjects within the authority of Congress to regulate commerce, also includes subjects not within its constitutional power, and that the two are so interblended in the statute that they are incapable of separation, we are of the opinion that the courts below rightly held the statute to be repugnant to the Constitution and nonenforcible."

Again, Chief Justice White, writing the opinion of the Court, says:

> "Equally clear is it, generally speaking, that where a statute contains provisions which are constitutional and others which are not, effect may be given to the legal provisions by separating them from the illegal. But this applies only to a case where the provisions are separable, and not dependent one upon the other, and does not support the contention that that which is indivisible may be divided. Moreover, even in a case where legal provisions may be severed from those which are illegal, in order to save the rule applies only where it is plain that Congress would have enacted the legislation with the unconstitutional provisions eliminated. All those principles are so clearly settled as not to be open to controversy."

We submit, in conclusion, that the Supreme Court of North Carolina committed error in adjudging the plaintiff in error guilty of a violation of the State law upon the facts appearing in the special verdict found by the jury and that the judgment in this action should be reversed.

Respectfully submitted,

MURRAY ALLEN,

Counsel for Plaintiff in Error.

Commercial Printing Company, Brief and Record Printers, Raleigh

IN THE

Supreme Court of the United States

OCTOBER TERM, 1917

SEABOARD AIR LINE RAILWAY CO.
Plaintiff in Error
v.
STATE OF NORTH CAROLINA
Defendant in Error

No. 18

In Error to the Supreme Court of the State of North Carolina

BRIEF OF THE STATE OF NORTH CAROLINA, DEFENDANT IN ERROR

STATEMENT OF FACTS

At the May, 1914, Term of the Superior Court of Wake County, North Carolina, in a prosecution by the State against the Seaboard Air Line Railway, a corporation of the State of North Carolina, Virginia and other States, for a violation of the prohibition laws of the State, the grand jury found the following bill of indictment:

> The jurors for the State upon their oath present: That Seaboard Air Line Railway, a railroad corporation and common carrier of intra- and interstate freight, doing business and having a station in the city of Raleigh, Wake County, State of North Carolina, and having on the 1st day of January, 1914, prior and subsequent to said date transported over and on its line of railroad shipments of spirituous and malt liquor from points in the State of Virginia to its station in the said city of Raleigh, county and State aforesaid, and having kept a record of such shipments of spirituous and malt liquors transported as aforesaid, with the names of the consignors, consignees, date of the receipt and delivery of said

shipments and to whom delivered, required by the laws of North Carolina, on the first day of January, in the year of our Lord one thousand nine hundred and fourteen, with force and arms, at and in the county of Wake and State of North Carolina, unlawfully and willfully did fail and refuse to exhibit to, and fail and refuse to permit to be inspected by, R. L. Davis, after demand had been made by him, the said R. L. Davis, to inspect said record of said Seaboard Air Line Railway, containing a record of the shipments of spirituous and malt liquors transported by said railroad over its line of railroad from the State of Virginia to the city of Raleigh, Wake County, North Carolina, against the form of the statute in such case made and provided and against the peace and dignity of the State."

Upon the trial of the case in the Superior Court, and in apt time the defendant railway company moved to quash the indictment for certain reasons fully set forth in the written motion to quash, which is printed at page 14 of the record herein. This motion was overruled and the defendant excepted.

The evidence for the State showed that R. L. Davis, a witness for the State, testified that he is a citizen and resident of Raleigh, Wake County, North Carolina; that prior to the indictment in this action, he being at that time a ciizen of the city of Raleigh, county of Wake, State of North Carolina, went to the office of the defendant company at Raleigh, N. C., during its business hours, and while the said office was open, and demanded of the agent that he be allowed to inspect the book kept by the defendant showing shipments of liquor from towns outside of the State of North Carolina to the city of Raleigh; that he was not an officer; that the agent of the defendant stated that he was instructed to and did refuse to allow the witness to make the inspection which he had requested and demanded; that witness had no legal process and did not make any demand under any legal process, and at the time of the alleged demand he was neither a State nor Federal officer of any kind, of any State or Territory; that at the time he made such demand he was seeking information from the said book for the purpose of prosecuting persons suspected of violating the law of North Carolina; that at the time said demand was made he was seeking general information as to shipments of whiskey into the city of Raleigh from points in another State, and that he

had in his mind especially an effort to see what evidence could be procured against one or more specified parties in the city of Raleigh, meaning by the words "general information" that he was seeking to ascertain who were the consignees of liquor and the quantities they were receiving for the purpose of prosecuting such parties as may be charged or suspected with the violation of the prohibition laws of the State; that at the time he made a demand for the inspection of the book he had no authority except that which existed, if any, by virtue of the fact that he was at that time a citizen of the State.

Defendant in open court admits that it had in the office of its agent at Raleigh a book of the entries of liquor shipments from the State of Virginia and other States, as provided by section 5, chapter 44 of the Public Laws of North Carolina of 1913.

The defendant offered no evidence and at the conclusion of all the evidence defendant moved to dismiss the action and for judgment of nonsuit upon the grounds set forth in written motion filed, which appears in full at page 10 of the record. This motion was overruled, and defendant excepted. Exception No. 2 in defendant's appeal. At the conclusion of the evidence it was agreed that a special verdict might be found by the jury, and the jury returned the following special verdict:

Special Verdict

"We, the jurors sworn and empaneled in this case, return the following special verdict in this case, the defendant having agreed that a special verdict might be found.

"We find that R. L. Davis, on a date prior to the starting of this prosecution, he being at that time a citizen of the county of Wake, State of North Carolina, went to the office of the defendant company during its business hours, and while said office was open, and demanded of the agent that he be allowed to inspect the book kept by the defendant showing shipments of liquor from points outside of the State of North Carolina to the city of Raleigh.

"We further find that the said Davis was not an officer.

"We further find that the agent of the defendant stated that he was instructed to and did refuse to allow the said Davis to make the inspection which he had requested and demanded.

"We further find that the said Davis had no legal process and did not make any demand under any legal process, and at the time of the alleged demand he was neither a State nor Federal officer of any kind of any State or Territory.

"We further find that at the time the said Davis made such demand, he was seeking information from said book for the purpose of prosecuting persons suspected of violating the law of North Carolina.

"We further find that at the time said demand was made that said Davis was seeking general information as to shipments of whiskey into the city of Raleigh from points in another State, and that he had in his mind especially an effort to see what evidence could be procured against one or more specific parties in the city of Raleigh, meaning by the words 'general information,' that he was seeking to ascertain who were the consignees of liquor and the quantities they were receiving, for the purpose of prosecuting such parties as may be charged or suspected with the violation of the prohibition laws of the State.

"We further find that the witness R. L. Davis, at the time he made a demand for an inspection of the book, had no authority except that which existed, if any, by virtue of the fact that he was at that time a citizen of the State.

"If, upon the foregoing facts, the Court is of the opinion that the defendant is guilty, then we say for our verdict that the defendant is guilty; if upon said facts the Court is of opinion that the defendant is not guilty, then we find that the defendant is not guilty."

Upon this special verdict the Court adjudged defendant not guilty. The State excepted and appealed, and the defendant also appealed in order to save the exceptions to refusal to quash indictment and denial of motion to dismiss the action and for judgment of nonsuit. The questions raised in the two appeals were practically the same.

ARGUMENT

Since the trial of this action in the State courts, the Supreme Court of the United States has (on January 8, 1917) handed down its decision in the cases of the *James Clark Distilling Company v. American Express Company, and the State of West Virginia et al.*, in which it is decided that the act of Congress of March 1, 1913 (37 Stat., 699), known as the Webb-Kenyon Law, is a constitutional enactment. The only matter, therefore, now to be decided on this appeal is, whether section 5, chapter 44 of the Public Laws of North Carolina of 1913 is in conformity with the provisions of the Webb-Kenyon Law and not in conflict with other inhibitions of the Federal Constitution.

Section 5 of chapter 44 of the Public Laws of North Carolina of 1913, above referred to, upon which the indictment herein was based, is as follows:

> "All express companies, railroad companies, or other transportation companies doing business in this State are required hereby to keep a separate book in which shall be entered immediately upon receipt thereof the name of the person to whom the liquor is shipped, the amount and kind received, and the date when received, the date when delivered, by whom delivered, and to whom delivered, after which record shall be a blank space, in which the consignee shall be required to sign his name, or if he cannot write, shall make his mark in the presence of a witness, before such liquor is delivered to such consignee, and which said book shall be open for inspection to any officer or citizen of the State, county, or municipality any time during business hours of the company, and said book shall constitute *prima facie* evidence of the facts therein and will be admissible in any of the courts of this State. Any express company, railroad company, or other transportation company or any employee or agent of any express company, railroad company, or other transportation company violating the provisions of this section shall be guilty of a misdemeanor; *Provided,* upon the filing of a certificate signed by a reputable physician or two (2) reputable citizens that the consignee is unable, by reason of sickness or infirmities of age, to appear

in person, then the said company is authorized to deliver any package to the agent of said consignee, and the agent shall sign the name of the consignee and his own name, and the certificate shall be filed of record."

The latest expression of this Court, to wit, *James Clark Distilling Company v. American Express Company et al.* (*supra*), appears to us to be determinative of the following points, which, prior to that decision, seemed to be germane to this case, to wit:

1. That liquor is a legitimate article of commerce.
2. That delivery is an essential part of interstate commerce.
3. That section 5 of the State law above referred to interferes directly with interstate commerce (except as permitted by the Webb-Kenyon Act).
4. That the exercise of police power is not a sufficient excuse for interference with interstate commerce.
5. That the Webb-Kenyon law is constitutional in part and unconstitutional in part.

The questions for determination, which we believe pertinent to the issue now before this Court are:

1. Whether, Congress having occupied the field, the right of the State to regulate the delivery of interstate shipments is destroyed.
2. Whether compliance with section 5 of chapter 44 of the Public Laws of North Carolina of 1913 will constitute a violation of section 15 of the Act to Regulate Commerce.

It cannot be denied that the Webb-Kenyon law is what its caption imports, namely: "An act divesting intoxicating liquors of their interstate character in certain cases." The many earlier decisions of this Court, to wit, *Leisy v. Hardin,* 135 U. S., 100; *Mugler v. Kansas,* 123 U. S., 623, *In re Rahrer,* 140 U. S., 545, and others, having recognized the authority of Congress to control the liquor traffic and having paved the way for such police control as the Webb-Kenyon law now proposes, in the light of these former decisions, we are better able to understand the true meaning and import of the Webb-Kenyon law.

In rder to become at all effective for the purpose intended, namely, the regulation of the liquor traffic, the Webb-Kenyon law must be given that construction which is usually applied to statutes of its character, namely, that when a statute contains a definite grant of

power it should be so construed as to authorize all things necessary to accomplish the express purpose of the grant.

Sutherland on Stat. Cons., secs. 340-343.
Enlich on Interpretation of Statutes, sec. 418.

The fact that this statute makes certain interstate shipments of intoxicating liquors legal and brings them within the police regulatory power of the State as soon as they cross the State line should confer upon the State authorities the right to make rules and regulations necessary to make such power effective. The Wilson Act (ch. 728 of 26 St. at Large, 313, U. S. Comp. St., 1901, p. 3177) had the effect of bringing these liquors within State control upon delivery to the consignee, and unless the Webb-Kenyon law intended to confer a greater power, its passage would have been unnecessary. The Webb-Kenyon law is intended to enable the State's agents and officers to ascertain whether whiskey coming into North Carolina by interstate shipments is in the State's control and subject to the State's regulations. Acting under this law, the North Carolina statute has required the defendant to keep a book containing a record of the names of consignees receiving whiskey shipments; and from this record to permit "any officer or citizen of the State, county or municipality, any time during business hours of the company," to inspect that record.

The whole contention of defendant, therefore, is that the keeping of the book containing information regarding liquor shipments, and permitting the inspection of the book by persons authorized by the statute, to wit: "Any officer or citizen of the State, county, or municipality, any time during business hours of the company," is in conflict with section 15 of the act of Congress to Regulate Commerce, as amended by the act of June 18, 1910, chapter 309, as follows:

> "It shall be unlawful for any common carrier subject to the provisions of this act, or any officer, agent or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receiver information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or de-

livered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transaction to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used."

The provisions in that act for giving out information are contained in Federal Statutory Annotations, Supplement 1912, Vol. 1, page 122, as follows:

> *"Provided,* that nothing in this act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any State or Federal Court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected or crime."

The defendant admits in open court (record, p. 27) that it kept in its offices at Raleigh, N. C., such a book of entries of liquor shipments as is required by the State statute under consideration, and this further narrows the contention of defendant to a consideration of whether the giving of information provided and kept in the above described record to "any officer or citizen of the State, county or municipality" is in conflict with the provision of the Federal act to Regulate Commerce, above quoted.

It is generally understood that this law was made by the Legislature of North Carolina in contemplation of the passage of the Webb-Kenyon law, in order to give it that effectiveness desired by its proponents, and but for the passage of the Webb-Kenyon law the arguments of the defendant might be controlling; but the principle above referred to, namely, that when a statute contains a definite grant of power it will be so construed as to authorize all things necessary to accomplish the express purpose of the grant, is of direct significance here and invests the statute with that vitality without which it would be almost an unmeaning provision.

The Webb-Kenyon law, having made certain interstate shipments of intoxicating liquors illegal and subjected them to the police power of the State as soon as they come within its territory, conferred, we

contend, upon the State authorities the right to make rules and regulations necessarily requisite to effectuate these powers. The Wilson Act (*supra*)brought these intoxicating liquors under State control as soon as delivered to the consignee, and it is inconceivable to think that Congress would have passed the Webb-Kenyon law, after long discussion and over the President's veto, if it had not been intended by that act to confer some greater powers than were already possessed in regard to intoxicating liquors. The keeping of the record provided for in section 5, chapter 44 of the Public Laws of North Carolina of 1913 in no way interferes with the records or books directed to be kept by the order of the Interstate Commerce Commission, nor does the giving of information contained in the book provided for in the State statute in any way interfere with the orderly transaction of interstate business. It is a police regulation and a necessary requirement to make effective the power given to the State by reason of the later Federal enactment, and is entirely in line with the many powers already possessed by the State for inspection, quarantine and other State powers. There is no discrepancy between the accounts, records and memoranda prescribed by the Interstate Commerce Commission (Section 20 of the Act to Regulate Commerce, Chapter 104, Section 20, Laws of the United States, 1887, and amendments thereto, and section 8592, 4 Compiled Statutes of the United States, pages 3872-73) and the record provided for in the State statute. The provisions of the Interstate Commerce Commission were made for the purpose of facilitating examination by official agents and to exclude as far as possible the opportunity to discriminate among shippers. The Interstate Commerce Commission was not endeavoring to provide for police regulation, which is the only purpose sought by the provisions of the State statute above referred to. However, should it be determined that some irreconcilable discrepancy does exist between these two provisions, it is undoubtedly true that the Webb-Kenyon law, being the later expression of the Congress, should be construed to modify the former Federal laws and regulations on the subject, and to enlarge, if necessary, the police power of the State with regard to the particular subject concerning which the legislation is enacted. The provision of the State statute, *supra,* providing for inspection "by any officer or citizen of the State, county or municipality any time during business hours of the company" is a police regulation clearly conferred by the Federal Congress upon the State

authorities and as such is in no wise in conflict with the commerce clause of the Federal Constitution and is not in conflict with the fourteenth amendment.

In re Converse, 127 U. S., 624.
Barbier v. Connolly, 113 U. S., 27.
Patson v. Pa., 232 U. S., 138.
Silz v. Hesterburg, 211 U. S., 31.
Lawton v. Steele, 152 U. S., 133.
Interstate Commerce Commission v. Baird, 194 U. S., 25.
In re Chapman, 166 U. S., 661.
Santa Fe R. R. v. Davidson, 149 Fed., 603.

Further, the proviso (Fed. Stat. Anno. Supplement 1912, vol. 1, page 122) authorizes the giving of such information, etc. "or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime." The State Legislature gave the authority to inspect the book to every citizen of the State. The argument of the plaintiff in error is that the State statute requiring the book to be open for inspection to any citizen is too general to constitute a citizen a "duly authorized person." The clear intent of the words of the Federal statute is that "such other duly authorized person" is not restricted to an officer, because the statute says: "to *any officer or other duly authorized person.*" This embraces a class clearly larger than those technically known as officers. It clearly included every person in addition to officers, who has legal authority. Could the State by statute confer legal authority upon any citizen to make the inspection when seeking such information for the prosecution of persons charged with or suspected of crime? The special verdict finds that Davis was at the time of the demand for inspection a citizen of the State of North Carolina and that he was seeking information for the prosecution of persons suspected of crime, this coming, *eo nomine,* within the excepted clauses, if he were "a duly authorized person." The Constitution and statutes of the State create the officers; they confer legal authority upon them and define their duties. Why cannot the legislative power of the State in given cases confer authority upon any *citizen* of the State? Officers are but agents of the State to execute its laws. A sheriff has the power to appoint deputies, general and special, or a justice of the peace is given authority, in the

absence of a regular officer, to appoint a special officer, all, of course, by statute; in all which cases, the persons appointed would be duly authorized to perform the official duty. Cannot the State through the Legislature, by express legislative provision, give any citizen the authority if one of its subordinate officers could give it? The State gave the right to every citizen to inspect the books; it has given to every citizen the right to arrest a felon (Secs. 3177 and 3181, Revisal of North Carolina of 1905). Why is not its power competent to qualify every citizen with legal authority ("duly authorized") to inspect the books of the plaintiff in error for the purpose of obtaining evidence in the prosecution of persons suspected of crime?

An argument presented with much earnestness by the defendant is to the effect that it will be necessary for a railroad company to determine in advance of recording them on the book required to be kept, which shipments of liquor are to be used for the purpose of violating the prohibition laws and which shipments are for legal and proper use. Such a construction of the Webb-Kenyon law would render it null and void, because if, in advance of the investigation which is to be made upon securing the information given by the record, the railroad company had already determined which shipments were for the purpose of violating the law, it would be only necessary to issue a warrant for the consignees of such shipments. The State statute provides that upon the information secured by examining the record provided to be kept, the authorities may then make an investigation of such shipments as are suspected of being illegal and to be used in violation of the State prohibition laws. It is to be noted that the possession of more than the legal amount allowed is prima facie evidence that the liquor is being kept for purpose of sale in violation of the prohibition law, and if upon the information taken from the book required to be kept by the railroad company it should develop that evidence was secured which did not result in an ultimate conviction, still, the mere possession of more than the amount allowed would be at least prima facie evidence of a crime against the prohibition laws. To give the Webb-Kenyon law the construction thus contended for by the defendant would be to say that it means that upon the railroad company is cast the burden of determining in advance of any investigation who are the violators of the prohibition laws of the State. No such

intent was ever in the minds of the framers of the law, we submit; and unless it does mean that such a regulation as is provided in section 5 of chapter 44 of the Public Laws of North Carolina of 1913 can be made by the State, then the Webb-Kenyon law was passed in vain.

The State of North Carolina, upon the foregoing, respectfully submits that section 5 of chapter 44 of the Public Laws of North Carolina of 1913 is in strict compliance with the power conferred upon the States by the Webb-Kenyon law enacted by the Congress of the United States, and that the judgment of the Supreme Court of North Carolina holding the defendant railway company guilty of the violation of the said law should be sustained.

Respectfully submitted,

JAMES S. MANNING,
Attorney-General.

ROBERT H. SYKES,
Assistant Attorney-General.

SEABOARD AIR LINE RAILWAY *v.* STATE OF NORTH CAROLINA.

ERROR TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

No. 18. Submitted November 7, 1917.—Decided December 10, 1917.

The power of a State under the Webb-Kenyon Law to forbid shipment into its territory of intoxicating liquor from other States includes the lesser power to prescribe by law the conditions under which such shipments may be allowed.

The Webb-Kenyon Law having subjected interstate shipments of intoxicating liquor to state legislation, a state law requiring carriers to keep records of such shipments, open for the inspection of any officer or citizen, is valid, notwithstanding the prohibition of § 15 of the Act to Regulate Commerce, as amended June 18, 1910, against the divulging of information by interstate carriers.

Section 5, North Carolina Public Laws, 1913, c. 44, p. 76, sustained.

169 N. Car. 295, affirmed.

THE case is stated in the opinion.

Mr. Murray Allen for plaintiff in error.

Mr. James S. Manning, Attorney General of the State of North Carolina, and *Mr. Robert H. Sykes*, Assistant Attorney General of the State of North Carolina, for defendant in error.

MR. JUSTICE MCREYNOLDS delivered the opinion of the court.

Pertinent provisions of "An Act to secure the enforcement of the laws against the sale and manufacture of intoxicating liquors" established by the General Assembly of North Carolina March 3, 1913, (P. L., 1913, c. 44, p. 76), are copied in the margin.[1] Section 5 requires rail-

[1] Public Laws of North Carolina, 1913, c. 44, p. 76:

"Sec. 1. That it shall be unlawful for any person, firm, corporation, association or company, by whatever name called, other than druggists and medical depositories duly licensed thereto, to engage in the business of selling, exchanging, bartering, giving away for the purpose of direct or indirect gain, or otherwise handling spirituous, vinous or malt liquors in the State of North Carolina. Any person, firm or corporation or association violating the provisions of this act shall be guilty of a misdemeanor.

"Sec. 2. That it shall be unlawful for any person, firm, association or corporation by whatever name called, other than druggists and medical depositories duly licensed thereto, to have or keep in his, their or its possession, for the purpose of sale, any spirituous, vinous or malt liquors; and proof of any one of the following facts shall constitute *prima facie* evidence of the violation of this section:

"First: The possession of a license from the government of the United States to sell or manufacture intoxicating liquors; or

"Second: The possession of more than one gallon of spirituous liquors at any one time, whether in one or more places; or

"Third: The possession of more than three gallons of vinous liquors at any one time, whether in one or more places; or

"Fourth: The possession of more than five gallons of malt liquors at any one time, whether in one or more places; or

"Fifth: The delivery to such person, firm, association or corporation of more than five gallons of spirituous or vinous liquors, or more than twenty gallons of malt liquors within any four successive weeks, whether in one or more places; or

road companies to keep a separate book in which shall be entered the name of every person to whom intoxicating liquor is shipped, together with amount, kind, date of receipt, etc., to be followed by the consignee's signature acknowledging delivery. And it further provides that the

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"Sixth: The possession of intoxicating liquors as samples to obtain orders thereon: . . . .

"Sec. 3. Upon the filing of complaint, under oath, by a reputable citizen, or information furnished under oath by an officer charged with the execution of the law, before a justice of the peace, recorder, mayor, or other officer authorized by law to issue warrants, charging that any person, firm, corporation, association or company, by whatever name called, has in his, their or its possession, at a place or places specified, more than one gallon of spirituous or vinous liquors or more than five gallons of malt liquors for the purpose of sale, a warrant shall be issued commanding the officer to whom it is directed to search the place or places described in such complaint or information, . . .

"Sec. 5. All express companies, railroad companies, or other transportation companies doing business in this State are required hereby to keep a separate book in which shall be entered immediately upon receipt thereof the name of the person to whom the liquor is shipped, the amount and kind received, and the date when received, the date when delivered, by whom delivered, and to whom delivered, after which record shall be a blank space, in which the consignee shall be required to sign his name, or if he cannot write, shall make his mark in the presence of a witness, before such liquor is delivered to such consignee, and which said book shall be open for inspection to any officer or citizen of the State, county, or municipality any time during business hours of the company, and said book shall constitute *prima facie* evidence of the facts therein and will be admissible in any of the courts of this State. Any express company, railroad company, or other transportation company or any employee or agent of any express company, railroad company, or other transportation company violating the provisions of this section shall be guilty of a misdemeanor: *Provided*, upon the filing of a certificate signed by a reputable physician or two (2) reputable citizens that the consignee is unable, by reason of sickness or infirmities of age, to appear in person, then the said company is authorized to deliver any package to the agent of said consignee, and the agent shall sign the name of the consignee and his own name, and the certificate shall be filed of record."

book shall be open for inspection by any officer or citizen, and makes failure so to do a misdemeanor.

Plaintiff in error was indicted at the May Term, 1914, Superior Court, Wake County, upon a charge of violating § 5 by refusing, in the preceding January, to permit a citizen to inspect its record showing shipments of spirituous and malt liquors transported from Virginia into that county, said record containing the "names of the consignors, consignees, date of the receipt and delivery of said shipments, and to whom delivered."

The jury returned a special verdict in which they found:

"That R. L. Davis, on a date prior to the starting of this prosecution, he being at that time a citizen of the county of Wake, State of North Carolina, went to the office of the defendant company during its business hours, and while said office was open, and demanded of the agent that he be allowed to inspect the book kept by the defendant showing shipments of liquor from points outside of the State of North Carolina to the city of Raleigh"; "the agent of the defendant stated that he was instructed to and did refuse to allow . . . the inspection"; "Davis had no legal process and did not make any demand under any legal process, and at the time of the alleged demand he was neither a State nor Federal officer of any kind of any State or Territory"; "he was seeking information from said book for the purpose of prosecuting persons suspected of violating the law of North Carolina"; and "was seeking general information as to shipments of whiskey into the city of Raleigh from points in another State, and that he had in his mind specially an effort to see what evidence could be procured against one or more specific parties in the city of Raleigh, meaning by the words 'general information' that he was seeking to ascertain who were the consignees of liquor and the quantities they were receiving, for the purpose of prosecuting such parties as may be charged or suspected with the violation

of the prohibition laws of the State"; and that he "had no authority except that which existed, if any, by virtue of the fact that he was at that time a citizen of the State."

Upon this special verdict the State Supreme Court adjudged plaintiff in error guilty as charged, 169 N. Car. 295; and it now maintains the judgment is erroneous, for reasons following:

I. Section 5, c. 44, *supra*, is void because an attempt by the State to regulate interstate commerce, in that it imposes as a condition precedent to delivery that the carrier shall keep a separate book containing name of person to whom liquor is shipped, amount and kind received, date of receipt and delivery, by whom and to whom delivered; and the consignee is required to receipt therefor before delivery.

II. In order to comply with § 5 by permitting records of interstate shipments of liquor to be inspected by a mere citizen, the carrier would necessarily violate the provisions of § 15, Act to Regulate Commerce, as amended June 18, 1910 (36 Stat. 539, 551, 553), which prohibit such action except under circumstances specified. (These are copied below.) [1]

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[1] "An Act to Regulate Commerce," as amended June 18, 1910 (36 Stat. 539, 551, 553).

"Section 15. . . .

"It shall be unlawful for any common carrier subject to the provisions of this Act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so

III. The Webb-Kenyon Law (Act of Congress, March 1, 1913, entitled "An Act divesting intoxicating liquors of their interstate character in certain cases," 37 Stat. 699) cannot affect the application of these principles to shipments destined to points in Wake County, because it relates to liquors intended to be received, possessed, sold or used in violation of state law; and to receive or possess liquor in any quantity in that county is not unlawful.

For some years it has been the established policy of North Carolina, "approved by popular vote and expressed and enforced by the general and many local statutes, that, except in very restricted instances, the manufacturing and sale of intoxicating liquors shall not be allowed." *Smith* v. *Express Company* (1914), 166 N. Car. 155, 157. Since our decision in *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, 242 U. S. 311, 320, 324, it has not been open to serious question that the Webb-Kenyon Law is a valid enactment; that "its purpose was to prevent the immunity characteristic of interstate commerce from being used to permit the receipt of liquor through such commerce in States contrary to their laws, and thus in effect afford a means by subterfuge and indirection to set such laws at naught"; and that under it a State may inhibit ship-

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used; *Provided*, That nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any state or federal court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carried to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

"Any person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than one thousand dollars."

ments therein of intoxicating liquors from another by a common carrier although intended for the consignee's personal use where such use is not actually forbidden. Plainly, therefore, after that enactment, nothing in the laws or Constitution of the United States restricted North Carolina's power to make shipment of intoxicants into Wake County a penal offence irrespective of any personal right in a consignee there to have and consume liquor of that character.

The challenged act instead of interposing an absolute bar against all such shipments, as it was within the power of the State to do, in effect permitted them upon conditions intended to secure publicity, to the end that public policy might not be set at naught by subterfuge and indirection. The greater power includes the less.

The provisions of § 15, Act to Regulate Commerce, here relied on were intended to apply to matters within the exclusive control of the Federal Government; and when by a subsequent act Congress rendered interstate shipments of intoxicating liquors subject to state legislation, those provisions necessarily ceased to be paramount in respect of them.

The judgment of the court below is

Affirmed.

MR. JUSTICE VAN DEVANTER dissents.